No. 14959

United States
Court of Appeals
for the Ninth Circuit

AMERICAN PRESIDENT LINES, LTD., a corporation, Appellant,

vs.

MARINE TERMINALS CORP., a corporation, Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern District of California, Southern Division

FILED

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Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. —1-25-56

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NAMES AND ADDRESSES OF ATTORNEYS

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311 California Street,
San Francisco, California,

Counsel for Appellant.

BOYD and TAYLOR,

350 Sansome Street,
San Francisco, California,

Counsel for Appellee.

In the United States District Court, Northern District of California, Southern Division

No. 34067

AMERICAN PRESIDENT LINES, LTD., a corporation, Plaintiff,

vs.

MARINE TERMINALS CORP., a corporation, Defendant.

COMPLAINT FOR INDEMNITY

Plaintiff complains of defendant and for cause of action alleges:

I.

Plaintiff is now and at all of the times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and maintaining an office and place of business in the City and County of San Francisco, State of California.

II.

Defendant is now and at all of the times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of one of the states of the United States, and is authorized to do and is doing business in the City and County of San Francisco, State of California, and elsewhere.

III.

On or about January 30, 1952, defendant under-

took, as an independent contractor, pursuant to a then existing agreement between plaintiff and defendant, to perform certain stevedoring work aboard the SS President Polk, a vessel owned and operated by plaintiff and carrying passengers and freight for hire in interstate and foreign commerce, said vessel then lying alongside a pier at San Francisco, California.

IV.

Shortly after commencing stevedoring work on said date, defendant ascertained through its agents, servants, and employees the lack and absence of a safety latch on a heavy hatchbeam at No. 1 hatch on said vessel, which condition, if allowed to continue and remain while stevedoring work was being carried on in said hatch, would result in having the stevedores working in a dangerous, unsafe and unseaworthy place due to the imminent danger of said hatchbeam becoming dislodged from its position during cargo handling operations and falling into the hatch.

Plaintiff herein was unaware, not only prior to but at all times mentioned herein and until said hatchbeam became dislodged as hereinafter set forth, that said safety latch was missing from said hatchbeam, nor did defendant herein at any time prior to said dislodgment advise plaintiff of said dangerous, unsafe, and unseaworthy condition.

Notwithstanding such knowledge on the part of defendant as aforesaid, defendant negligently, recklessly, and without regard to the imminent peril to its employees, commenced cargo operations in said

hatch. Shortly thereafter said hatchbeam became dislodged when struck by certain cargo handling equipment being operated by and under the control of defendant's agents, servants, and employees, and fell into said hatch, striking and severely injuring a stevedoring employee of defendant, one Robert Williams, who was working in the course of his employment in said hatch.

V.

On or about April 3, 1952, said Robert Williams brought suit against American President Lines, Ltd., in the Superior Court of the State of California, in and for the City and County of San Francisco, numbered 416216, entitled "Robert Williams, Plaintiff, vs. American President Lines, Ltd., a corporation; The Doe Company; John Doe; and Richard Roe, Defendants", seeking recovery of $250,000 general damages, together with past and future wage loss, medical expenses, and costs of suit. Attached hereto and made a part hereof, marked "Exhibit A", is a true and correct copy of the complaint in said action.

Because of the absolute liability of American President Lines, Ltd. to said Robert Williams based on the unseaworthiness of said hatchbeam as aforesaid, said action was compromised and settled by and between American President Lines, Ltd. and said Robert Williams on January 16, 1953, for the reasonable sum of $62,500; a full and complete release was taken; and the action was dismissed with prejudice on January 19, 1953.

Expenses and costs attendant upon defense of

said action, and reasonably incurred in connection therewith, together with attorneys' fees reasonably incurred were in the total sum of $5,063.

VI.

The sole, active, primary, and proximate cause of the injuries sustained by said Robert Williams was the negligent and reckless action of defendant Marine Terminals Corporation in proceeding with cargo operations while fully aware of the fact of the missing safetylatch as aforesaid, whereby plaintiff herein has been damaged in the sum of $67,563, as to which amount it is entitled to be fully indemnified by defendant.

No part of said sum has been paid, and the whole thereof is due, owing and unpaid.

VII.

This is a civil action between citizens of different states, where the amount in controversy exceeds the sum or value of $3,000, exclusive of interest and costs. Jurisdiction of this court is founded upon the provisions of 28 United States Code, Sec. 1332.

Wherefore, plaintiff prays judgment in the sum of $67,563, together with costs of suit herein, and for such other and further relief as may be proper in the premises.

/s/ TREADWELL & LAUGHLIN,
/s/ CHARLES M. HAID, JR.,
Attorneys for Plaintiff

Duly Verified.

EXHIBIT "A"

In the Superior Court of the State of California in and for the City and County of San Francisco

No. 416216

Robert Williams, Plaintiff, vs. American President Lines, Ltd., a corporation; The Doe Company, John Doe and Richard Roe, Defendants.

LONGSHOREMAN'S COMPLAINT FOR DAMAGES

(Personal Injuries)

Plaintiff complains of defendants and for cause of action alleges:

I.

That the defendant American President Lines, Ltd., a corporation, is a corporation existing under and by virtue of the statutes of a state unknown to plaintiff, and maintains an office and principal place of business in the City and County of San Francisco, State of California, and is subject to and within the jurisdiction of the above-entitled Court.

II.

That the true names of the defendants sued herein as The Doe Company, John Doe and Richard Roe are presently unknown to plaintiff, and plaintiff prays leave to amend this complaint and insert herein said true names when ascertained.

III.

That during all of the times herein mentioned

defendants owned, managed, operated, navigated, maintained and controlled the SS President Polk and employed and used said vessel in the transportation of freight and passengers for hire in interstate and foreign commerce.

IV.

That on or about January 30, 1952, at or about the hour of 9:30 a.m., plaintiff was employed as a stevedore in the service of a certain stevedoring company, and was engaged in the usual course and scope of his employment aboard said SS President Polk as a business invitee of said defendants. That at said time said vessel was docked at Pier 50-D, San Francisco, California. That plaintiff was working in the lower hold of No. 1 hatch of said vessel.

That at said time and place defendants so carelessly managed, operated, maintained and controlled their said vessel and the gear and appurtenances thereof, and so carelessly and negligently failed to provide proper and adequate locks or other safety devices for securing in place the strongbacks which crossed the hatchway at the level of the shelter deck above the place where plaintiff was working, and so carelessly and negligently provided unsafe and improper loading gear and strongbacks, that by reason thereof, during the course of operations, a strongback was caused to and did fall from its position into the lower hold of said vessel, and did strike plaintiff, by reason whereof plaintiff was caused to and he did sustain serious and grievous physical and bodily injury to his head, back, body and legs, in-

cluding but not limited to injury to plaintiff's right kidney, shock, extensive subdural and perineal hemorrhage, fractures of the transverse processes of the first, second and third lumbar vertebrae, fractured sacrum, fractured pelvis, and other severe injuries.

V.

That said injuries have caused and do now cause plaintiff severe and grievous mental and physical suffering and pain. Plaintiff is informed and believes and therefore alleges that said injuries are permanent in character and that he will continue to suffer pain and injury by reason thereof, all to plaintiff's general damage in the sum of $250,*00*.00, no part of which has been paid.

VI.

That at the time of said accident, as aforesaid, plaintiff was gainfully employed as a longshoreman and earning approximately $100 per week. Plaintiff has been unemployed since said accident until the date hereof, as a direct and proximate result of said injuries, incurred as aforesaid, and has thereby suffered wage loss to his special damage at the above rate, and plaintiff is informed and believes and therefore alleges that he will continue for an indefinite period of time in the future to sustain such wage loss, and plaintiff prays that the full amount of said wage loss, not now known to plaintiff, may be inserted herein, and in all of the records and pleadings of this action, at the time this action comes to trial, and that he may amend his

prayer herein to request reimbursement and compensation for said wage loss in such sum as the proof shall show at the trial.

VII.

That plaintiff was compelled to and he did obtain the services and attention of doctors to treat and relieve him on account of said injuries and has incurred expenses therefor and has suffered special damage as a result thereof. Plaintiff does not know the exact cost of said medical services at the time of filing this complaint and prays leave to amend said complaint or offer proof at the time of trial herein when said expenses are ascertained.

Wherefore, plaintiff prays judgment, etc.

As and for a Second, Separate and Additional Cause of Action against said defendants, and each of them, plaintiff alleges:

I.

Incorporates by reference the same as though set forth in full all of the allegations contained in paragraphs I, II, III, V, VI and VII of the first cause of action herein.

II.

That on or about January 30, 1952, at or about the hour of 9:30 a.m., plaintiff was employed as a stevedore in the service of a certain stevedoring company, and was engaged in the usual course and scope of his employment aboard said SS President

Polk in the service of the said vessel. That at said time said vessel was docked at Pier 50-D, San Francisco, California. That plaintiff was working in the lower hold of No. 1 hatch of said vessel.

That at said time and place defendants carelessly and negligently maintained said vessel, its gear, appliances and appurtenances in an unsafe and unseaworthy condition in that the strongbacks which crossed the hatchway at the level of the shelter deck above the place where plaintiff was working, did not have safe, proper and adequate locks or other safety devices for securing the said strongbacks in place, and in that the loading gear was improper, unsafe and unseaworthy, and that by reason thereof, during the course of operations a strongback was caused to and did jerk, dislodge and fall from its position into the lower hold of said vessel, and did strike plaintiff, by reason whereof plaintiff was caused to and he did sustain serious and grievous physical and bodily injury to his head, back, body and legs, including but not limited to injury to plaintiff's right kidney, shock, extensive subdural and perineal hemorrhage, fractures of the transverse processes of the first, second and third lumbar vertebrae, fractured sacrum, fractured pelvis, and other severe injuries.

Wherefore, plaintiff prays judgment against defendants, and each of them, in the sum of $250,000, plus the amount of wage loss sustained and to be sustained by plaintiff, plus the amount of medical expenses incurred by plaintiff and to be incurred,

for costs of suit herein, and for such other and further relief as is just in the premises.

Dated: February 11, 1952.

GLADSTEIN, ANDERSEN & LEONARD

By LLOYD E. McMURRAY,

Attorneys for Plaintiff.

State of California,
City and County of San Francisco—ss.

Robert Williams, being first duly sworn, deposes and says:

That he is the plaintiff named in the within and foregoing complaint; that he has read said complaint and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on his information or belief, and as to such matters he believes it to be true.

ROBERT WILLIAMS

Subscribed and sworn to before me this 15 day of February, 1952.

[Seal] AGNES QUAVE,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed September 20, 1954.

[Title of District Court and Cause.]

NOTICE OF HEARING OF MOTION TO DISMISS

To: Plaintiff above named and to Messrs. Treadwell & Laughlin and Charles M. Haid, Jr., its attorneys:

You and Each of You Will Please Take Notice, that the undersigned will bring the above Motion on for hearing before this Court, at the Court Room, United States Court, Post Office Building, 7th and Mission Streets, San Francisco, California on the 11th day of October, 1954, at 9:30 o'clock a.m., in the forenoon of that day or as soon thereafter as counsel can be heard.

BOYD, TAYLOR & REYNOLDS,

/s/ BOYD, TAYLOR & REYNOLDS,

Attorneys for Defendant Marine Terminals Corp., a corporation.

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

The defendant moves the Court as follows:

1. To dismiss the action because the Complaint fails to state a claim against defendant upon which relief can be granted.

Dated: This 4th day of October, 1954.

BOYD, TAYLOR & REYNOLDS,
/s/ BOYD, TAYLOR & REYNOLDS,
Attorneys for Defendant, Marine Terminals Corp., a corporation.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 5, 1954.

[Title of District Court and Cause.]

MEMORANDUM AND ORDER

Defendant stevedoring company moves to dismiss a complaint for indemnity brought against it by plaintiff shipowner. Plaintiff was sued in a state court by an employee of defendant who was injured in the course of his employment while unloading one of plaintiff's ships. The complaint in the state court consisted of allegations of negligence and of unseaworthiness of the vessel. The parties to the suit in the state court arrived at a settlement, and now plaintiff seeks recovery of the amount it paid in settlement of the injured person's claim plus plaintiff's expenses in connection with the state proceeding. Plaintiff seeks indemnity on the theory that the sole, active and primary cause of the injury was defendant's negligence in proceeding with the unloading with knowledge of a dangerous condition, without notifying plaintiff or its agents.

Defendant's motion to dismiss is based upon the contention that the action in the state court was

for active negligence, and that plaintiff here is bound by the allegations of active negligence in the state proceeding because it voluntarily settled that action. Defendant cites Fidelity Casualty Co. vs. Federal Express, 6th Cir., 136 F.2d 35; but that case is not in point because it was a suit between parties who were co-defendants in a previous suit. That case held that a judgment debtor who pays the judgment against him is bound by the record in the case, at least as to other parties to the suit culminating in that judgment. Plaintiff here was not a judgment debtor in the previous suit, and defendant was not a party to it.

There is in this circuit a nearly exact precedent for the present suit for indemnity: States S.S. Co. vs. Rothschild International Stevedoring Co., 9th Cir., 205 F.2d 253, in which the court reversed the dismissal of a complaint for indemnity brought by a shipowner against a stevedoring company, to recover the amount of a settlement with the widow of the injured man. Therefore it cannot be said that plaintiff shipowner is precluded as a matter of law from showing that defendant's negligence was the sole, active and primary cause of the injury. See also Davis vs. American President Lines, N.D. Cal., 106 F. Supp. 729. Thus defendant's principal contention is without merit and its motion to dismiss is denied.

Defendant also claims that it was prejudiced in some way by the fact that it was not given notice of the suit in the state court, and had no part in the settlement of that suit; but defendant will now

have its day in court in this suit. Nothing was decided as to this defendant by the settlement of the previous suit. Even the amount of the settlement can be assailed if the defendant wishes to do so. Therefore no prejudice to defendant has been shown to have resulted from the settlement between plaintiff and the injured man.

Defendant seeks support for its position in decisions in the second circuit. Apart from the fact that recent decisions in the second circuit recognize a right to indemnity in a case similar to the one at bar, Berti vs. Compagnie, etc. 2d Cir., 213 F.2d 397, this Court is bound by the law of the Ninth Circuit as set forth in States S.S. Co. vs. Rothschild International Stevedoring Co., supra. The States case also disposes of defendant's contention that the case at bar is controlled by Halcyon Lines vs. Haenn Ship Corp., 342 U.S. 282, because the Court of Appeals there held, 205 F.2d at 255, that "* * * the Halcyon case has no application to indemnity cases."

It Is Ordered that the motion of defendant Marine Terminals Corporation to dismiss the complaint be, and the same is hereby denied, and defendant is directed to answer the complaint.

Dated: December 8, 1954.

/s/ OLIVER J. CARTER,
United States District Judge

[Endorsed]: Filed December 8, 1954.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

Comes now the defendant, Marine Terminals Corp., a corporation and answering Plaintiff's complaint on file herein admits, denies and alleges as follows:

I.

Answering Paragraph I, said defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations therein contained and placing its denial on the ground, denies each and every, all and singular, the allegations therein contained and each and every part thereof.

II.

Answering Paragraphs IV and VI, denies each and every, all and singular, the allegations therein contained and each and every part thereof.

III.

Answering Paragraph V, from the beginning thereof to and including the words "said action" Line 12, Page 3, said defendant alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegations therein contained and placing its denial on that ground, denies each and every, all and singular, the allegations therein contained and each and every part thereof.

Further answering Paragraph V, beginning with the words "because of" Line 13, Page 3, through

and including the end of the Paragraph V, denies each and every, all and singular, the allegations therein contained and each and every part thereof.

Denies that Plaintiff, American President Lines, Ltd., a corporation, has been damaged in the sum of $67,563 or any other sum or sums whatsoever or at all.

IV.

Denies each and every allegation in Plaintiff's Complaint contained not heretofore specifically admitted.

V.

And as and for a Further, Separate and Affirmative Answer to Said Complaint, this defendant alleges that Robert Williams, who was the Plaintiff in that certain action described and set forth in Paragraph V of the Complaint herein, was at the time of the accident and resulting injuries described and set forth in said Paragraph V of said Complaint herein; was employed by this defendant and alleges therefore that any and all liability of this defendant to any person or persons in any way arising out of said accident or the matters set forth in said Complaint is covered and controlled by the provisions of the Longshoremen and Harbor Workers Compensation Act, 33 U.S.C.A. Sections 901 to 950 and that this defendant had secured the payment of compensation thereunder and had fully complied with all the terms conditions of said Act. And as a Further, Separate and Affirmative Answer to said Complaint; this defendant alleges that the negligence and carelessness, if any, causing the

alleged injury to plaintiff was the negligence and carelessness of persons other than this defendant, its agents, servants or employees, and that this defendant, its agents, servants and employees were without fault or negligence in any respect causing or contributing to said injury. And as and For a Further, Separate and Affirmative Answer to said Complaint, this defendant alleges that purported release and settlement obtained and taken by the plaintiff, American President Lines, Ltd., a corporation, was unreasonable in amount and did constitute a voluntary contribution or payment on the part of said Plaintiff, which said unreasonableness of amount and said voluntary payment was further made without any notice thereof to this defendant, and without any opportunity to participate in or defend said action and as a result thereof would not be binding on or upon this defendant to respond by way of indemnity or otherwise.

Wherefore, this defendant, Marine Terminals Corporation, a corporation, prays that Plaintiff's Complaint be dismissed, for defendant's costs in this action incurred and for such further and additional relief as shall seem just and equitable in the premises.

/s/ BOYD & TAYLOR,

Attorneys for Defendant, Marine Terminals Corporation, a corporation.

Duly Verified.

[Endorsed]: Filed December 21, 1954.

[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEYS

To the Defendant above named and to Boyd & Taylor, its Attorneys:

Please take notice that Plaintiff American President Lines, Ltd., has changed attorneys in the above-entitled action and that Lillick, Geary, Olson, Adams & Charles, 311 California Street, San Francisco, California, have been and are hereby substituted in place of the undersigned as attorneys for plaintiff named.

Dated: January 6, 1955.

/s/ TREADWELL & LAUGHLIN,
Attorneys for Plaintiff American President Lines, Ltd.

The undersigned hereby consent to the above change of attorneys.

Dated: January 5, 1955.

/s/ TREADWELL & LAUGHLIN,
Attorneys for Plaintiff American President Lines, Ltd.

/s/ C. R. WADE, Secretary
American President Lines, Ltd.

We agree to be substituted in place of Treadwell & Laughlin in the above-entitled action as attorneys for Plaintiff American President Lines, Ltd.

Dated: January 5, 1955.

LILLICK, GEARY, OLSON, ADAMS & CHARLES,

/s/ By EDWIN L. GERHARDT

[Endorsed]: Filed January 6, 1955.

[Title of District Court and Cause.]

NOTICE OF MOTION

To the Defendants above named and to Boyd and Taylor, their Attorneys:

Please take notice that the undersigned will bring the attached Motion to Amend Complaint on for hearing before the Master Calendar Department of this Court on Monday, January 24, at the hour of 9:30 o'clock a.m., or as soon thereafter as counsel can be heard.

/s/ LILLICK, GEARY, OLSON, ADAMS & CHARLES,
Attorneys for Plaintiff

MOTION TO AMEND COMPLAINT

Plaintiff American President Lines, Ltd., moves the Court for leave to amend its complaint on file herein in the following particulars:

1. Striking out the paragraph beginning line 25, page 2, and ending line 1, page 3, Paragraph IV, and inserting in lieu thereof the following:

Notwithstanding such knowledge on the part of defendant as aforesaid, defendant negligently, recklessly, and without regard to the imminent peril to its employees, commenced cargo operations in said hatch. Shortly thereafter, defendant, its agents, servants or employees negligently, recklessly, and improperly maintained and/or controlled winches, gear and other appurtenances, within its control and/or supplied improper or unsafe cargo hooks, bridles, slings and/or other cargo handling equipment causing said hatchbeam to become dislodged and fall into said hatch striking and severely injuring a stevedoring employee of defendant, one Robert Williams, who was working in the course of his employment in said hatch.

2. Striking out the paragraph beginning with line 13 and ending line 19, page 3, Paragraph V, and inserting in lieu thereof the following:

Because of the absolute liability of American President Lines, Ltd., to said Robert Williams based on unseaworthiness and negligence as aforesaid, said action was compromised and settled by and between American President Lines, Ltd. and said Robert Williams on January 6, 1953, for the reasonable sum of $62,500.00, a full and complete release was taken, and the action was dismissed with prejudice on January 19, 1953.

3. Striking out the paragraph beginning with line 25 and ending with line 31, Paragraph VI, page 3, and inserting in lieu thereof the following:

The sole, active, primary, and proximate cause of the injuries sustained by said Robert Williams

vas the negligent and reckless action of defendant Marine Terminals Corporation as aforesaid, wherey plaintiff herein has been damaged in the sum of $67,563.00, as to which amount it is entitled to be fully indemnified by defendant.

The grounds of this motion are to enable plaintiff to amend the complaint to conform to evidence that will be produced at the time of trial and to allege more specifically defendant's acts of negligence.

/s/ LILLICK, GEARY, OLSON, ADAMS & CHARLES,
Attorneys for Plaintiff

[Endorsed]: Filed January 13, 1955.

[Title of District Court and Cause.]

ORDER

This cause came on to be heard on January 24, 1955, on plaintiff's motion for leave to file an amended complaint, and it appearing that justice requires that such leave be given, and the court being fully advised,

It Is Ordered:

1. That plaintiff be given leave to file its amended complaint; and

2. That the answer of the defendant hereto filed to the plaintiff's complaint shall stand as an answer to the allegations contained in the plaintiff's complaint as amended.

Dated: February 3, 1955.

/s/ LOUIS E. GOODMAN,
United States District Judge

Approved as to form:

BOYD & TAYLOR,
/s/ By FRED G. NAVE,
Attorneys for Defendant

[Endorsed]: Filed February 3, 1955.

[Title of District Court and Cause.]

FIRST AMENDED COMPLAINT FOR INDEMNITY

Plaintiff complains of defendant and for cause of action alleges:

I.

Plaintiff is now and at all of the times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and maintaining an office and place of business in the City and County of San Francisco, State of California.

II.

Defendant is now and at all of the times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of one of the states of the United States, and is authorized to do and is doing business in the City and County

of San Francisco, State of California, and elsewhere.

III.

On or about January 30, 1952, defendant undertook, as an independent contractor, pursuant to a then existing agreement between plaintiff and defendant, to perform certain stevedoring work aboard the SS President Polk, a vessel owned and operated by plaintiff and carrying passengers and freight for hire in interstate and foreign commerce, said vessel then lying alongside a pier at San Francisco, California.

IV.

Shortly after commencing stevedoring work on said date, defendant ascertained through its agents, servants, and employees the lack and absence of a safety latch on a heavy hatchbeam at No. 1 hatch on said vessel, which condition, if allowed to continue and remain while stevedoring work was being carried on in said hatch, would result in having the stevedores working in a dangerous, unsafe and unseaworthy place due to the imminent danger of said hatchbeam becoming dislodged from its position during cargo handling operations and falling into the hatch.

Plaintiff herein was unaware, not only prior to but at all times mentioned herein and until said hatchbeam became dislodged as hereinafter set forth, that said safetylatch was missing from said hatchbeam, nor did defendant herein at any time prior to said dislodgment advise plaintiff of said dangerous, unsafe, and unseaworthy condition.

Notwithstanding such knowledge on the part of defendant as aforesaid, defendant negligently, recklessly, and without regard to the imminent peril to its employees, commenced cargo operations in said hatch. Shortly thereafter, defendant, its agents, servants or employees negligently, recklessly, and improperly maintained and/or controlled winches, gear and other appurtenances, within its control and/or supplied improper or unsafe cargo hooks, bridles, slings and/or other cargo handling equipment causing said hatchbeam to become dislodged and fall into said hatch striking and severely injuring a stevedoring employee of defendant, one Robert Williams, who was working in the course of his employment in said hatch.

V.

On or about April 3, 1952, said Robert Williams brought suit against American President Lines, Ltd., in the Superior Court of the State of California, in and for the City and County of San Francisco, numbered 416216, entitled "Robert Williams, Plaintiff, vs. American President Lines, Ltd., a corporation; The Doe Company; John Doe; and Richard Roe, defendants", seeking recovery of $250,000 general damages, together with past and future wage loss, medical expenses, and costs of suit. Attached hereto and made a part hereof, marked "Exhibit A", is a true and correct copy of the complaint in said action.

Because of the absolute liability of American President Lines, Ltd. to said Robert Williams based

on unseaworthiness and negligence as aforesaid, said action was compromised and settled by and between American President Lines, Ltd. and said Robert Williams on January 16, 1953, for the reasonable sum of $62,500.00, a full and complete release was taken, and the action was dismissed with prejudice on January 19, 1953.

Expenses and costs attendant upon defense of said action, and reasonably incurred in connection therewith, together with attorneys' fees reasonably incurred were in the total sum of $5,063.

VI.

The sole, or active, or primary, and proximate cause of the injuries sustained by said Robert Williams was the negligent and reckless action of defendant Marine Terminals Corporation as aforesaid, whereby plaintiff herein has been damaged in the sum of $67,563.00, as to which amount it is entitled to be fully indemnified by defendant.

No part of said sum has been paid, and the whole thereof is due, owing and unpaid.

VII.

This is a civil action between citizens of different states, where the amount in controversy exceeds the sum or value of $3,000, exclusive of interest and costs. Jurisdiction of this court is founded upon the provisions of 28 United States Code, Sec. 1332.

Wherefore, plaintiff prays judgment in the sum of $67,563.00, together with costs of suit herein, and

for such other and further relief as may be proper in the premises.

/s/ LILLICK, GEARY, OLSON, ADAMS & CHARLES,
Attorneys for Plaintiff

Duly Verified.

[Note: Exhibit A is set out at pages 7-12.]

[Endorsed]: Filed February 3, 1955.

[Title of District Court and Cause.]

MEMORANDUM OPINION

Roche, Chief Judge:

This is an action for indemnity in the amount of $67,563.00. Jurisdiction of this court is founded upon the provisions of 28 United States Code Section 1332. The facts of this case are as follows:

On January 29, 1952, plaintiff's vessel, President Polk, was in San Francisco, and pursuant to a written stevedoring contract the defendant went aboard the vessel for the purpose of discharging the ship's cargo. The contract contained no agreement, covenant or language of indemnity. This fact is undisputed. American President Lines has conceded there was a missing locking device on the No. 2 king strongback in the lower 'tween deck hatch.

During unloading operations the defective strongback was dislodged by the bridle and hook manipulated by the winch driver, and fell into the lower hold causing personal injuries to Mr. Williams, a

stevedore. The operation of the winch bridle and hook was in the usual and customary manner, and the winch driver was free of negligence. The evidence reveals that it is the duty of the shipowner to repair and maintain the locking devices.

An action was brought by the injured man, Williams, against American President Lines. No tender of defense of the action in the State Court was made by the American President Lines to the Marine Terminals Corporation. Further, no third party or indemnity action was filed. In settlement of Mr. Williams' claim American President Lines paid him $62,500.00.

The question for decision is whether a recovery for indemnity may be had by the American President Lines, the shipowner, against Marine Terminals.

The shipowner's position is that its negligence was passive, and that the proximate cause of Williams' injury was the negligence of Marine Terminals. This contention is based on the fact that the evidence shows that the gang boss and the gang steward knew that the hatch beam was defective when the work began. Therefore it is argued the subsequent damages were due to defendant's independent acts of negligence, supervening in time, in violation of all the safety rules. Plaintiff's brief states that defendant "had the last clear chance to avoid this accident."

If this court had merely the problem of equating the relative liability as between two tort feasors its task would be simple. The evidence clearly shows

that plaintiff's negligence was passive, and that defendant continued its work with knowledge of the dangerous condition. Therefore defendant's share of responsibility would be greater for the damages which ensued.

However, this case is governed by the decision of the Supreme Court in Halcyon Lines vs. Haenn Ship Refitting Corp., 342 U. S. 282. In that case the Supreme Court considered whether it would create an enforceable right of contribution as between joint tort feasors, and stated, "we would feel free to do so here if wholly convinced that it would best serve the ends of justice." The conclusion reached was "that it would be unwise to attempt to fashion new judicial rules of contribution and that the solution of this problem should await congressional action."

The court stated in its opinion that certiorari was granted because of the conflicting views taken by the circuits as to the existence of and the extent to which contribution can be obtained in cases such as this. It then cited as cases under consideration American Mutual Insurance Co. vs. Matthews, 182 F.2d 322, and United States vs. Rothschild International Stevedoring Co., 183 F.2d 181. It is this court's view that if the instant case were decided under the rule of law enunciated in U. S. vs. Rothschild Int. Stev. Co., supra, that plaintiff would be entitled to indemnity. However, the Supreme Court has declared the rule which this court is bound to follow. Under this rule plaintiff must be denied recovery.

The case of States S.S. Co. vs. Rothschild International Stevedoring Co., 205 F.2d 253, indicates the exception to the general rule enunciated by the Supreme Court. That is the situation where the shipowner is liable without fault as a result of another's acts. Indemnity, other than as provided by contract, is allowable where the shipowner is liable only because of its non-delegable duty to furnish a stevedore a seaworthy ship and a safe place in which to work under the doctrine of Seas Shipping Co. vs. Sierocki, 328 U. S. 85, a species of absolute liability regardless of fault. The shipowner in the instant case was not liable without fault for he admittedly supplied a beam with a defective locking device. As such, this negligence jointly concurred with the Stevedoring Company's negligence resulting in the ensuing accident. If plaintiff were allowed recovery in this case it would be on basis of contribution rather than on a true indemnity theory.

In accord with Halcyon vs. Haenn Ship Refitting Corp., supra, and the above opinion,

It Is Ordered that judgment be entered herein, upon findings of fact and conclusions of law in favor of the defendant. The respective parties to pay their own costs.

Dated: July 12th.

/s/ MICHAEL J. ROCHE,
Chief Judge, U. S. District Court

[Endorsed]: Filed July 12, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The above-entitled cause coming on for trial on the 8th day of June, 1955, before the Honorable Michael J. Roche, Chief Judge, United States District Court, sitting without a jury; Edwin L. Gerhardt and Gordon L. Poole of Lillick, Geary, Olson, Adams & Charles, appearing as counsel for Plaintiff, American President Lines, Ltd., and M. K. Taylor and Frederic G. Nave of Boyd & Taylor, appearing as counsel for the defendant Marine Terminals Corp.; and the court having heard the testimony and having examined the proofs offered by the respective parties and the cause having been submitted to the court for decision and the court being fully advised in the premises now makes its findings of fact as follows:

Findings of Fact

1. On January 29, 1952, plaintiff's vessel, President Polk, was in San Francisco, for the purposes of loading and unloading cargo. That the defendant, Marine Terminals Corporation, pursuant to a written stevedoring contract went aboard for the purpose of discharging the ship's cargo.

2. That the stevedoring contract, between said parties contained no agreement, covenant or language of indemnity.

3. That at the time of the arrival of said vessel

in San Francisco, and prior to the defendant going aboard for the purpose of discharging the vessel's cargo, there was a missing locking device on the number 2 King strongback in the lower 'tween deck hatch.

4. That the plaintiff knew and was aware of the absence of locking devices on some of the strongbacks on the vessel and communicated this information to the defendant.

5. That plaintiff's chief officer had on January 29, 1952, communicated to defendant's walking boss, Ernest Bleile, a warning that some beams aboard the vessel might lack locking devices and cautioned him to remove any defective beams.

6. That at the time of the accident, only one section of the three sections of the lower 'tween deck hatch square was open.

7. That on the second day of the unloading of the cargo of said vessel, the defendant's winch driver, Mr. Paquette, dislodged a strongback by the bridle and hook being manipulated by him in the cargo unloading operations. That upon becoming dislodged said strongback fell into the lower hold striking and causing personal injuries to Mr. Williams, a stevedore employee of the defendant.

8. That the winch driver, Mr. Paquette, had prior to, and at the time of the dislodgement of said hatch beam, been using operating and manipulating the bridle and hook in the usual and customary manner and free of any negligence whatsoever.

9. That the main purpose of locking devices of strongbacks is to prevent the dislodgement of

strongbacks by being caught or hooked by the bridle and hook used in loading and unloading operations.

10. That had said strongback been equipped with a locking device, it would not have become dislodged and in fact could not have become dislodged by the said bridle and hook used in said loading or unloading operations.

11. That it was the duty of the vessel's owners (plaintiff herein) to supply, repair and maintain the locking devices used on said hatch beam.

12. That plaintiff's negligence was passive and that the defendant continued to work with the knowledge of the dangerous condition of the defective strongbacks.

12. That the injured stevedore, Mr. Williams, was an employee of the defendant. That the defendant, Marine Terminals, had complied with the provisions of the Longshoreman and Harbor Compensation Act, and for several months following said accident and resulting injuries received both compensation and medical care, attention and expenses pursuant to the said act.

14. That Mr. Williams later elected to file an action for damages against the vessel's owner (the plaintiff herein) in the State Court of California.

15. That on April 3, 1952, Robert B. Williams filed suit in the Superior Court of the City and County of San Francisco for $250,000.00 naming American President Lines as defendant for the injuries resulting from his accident of January 30, 1952.

16. That no tender of defense of the action in the

State Court was made by the American President Lines to the Marine Terminals Corporation, nor was any third party or indemnity action filed in said State Court action bringing in or attempting to bring in the Marine Terminals Corporation.

17. That the State Court action filed by Mr. Williams was settled by the American President Lines paying the sum of $62,500.00 to Mr. Williams, which said settlement and sum was reasonable.

18. That Williams, an employee of defendant, suffered serious permanent injuries to his back and hip joint and suffered a permanent wage loss as the result of his injury.

From the foregoing facts that court concludes as follows:

Conclusions of Law

1. That both of the parties, plaintiff and defendant, were jointly and concurrently negligent in the premises, which joint and concurrent negligence caused the accident and resulting injuries to Mr. Williams, the stevedore.

2. That the joint and concurrent negligence of the said parties consisted of negligence on the part of both of them in that the shipowner knowingly supplied a hatch beam totally lacking a locking device; and both of said parties with full knowledge of said lack of a locking device permitted the unloading and loading operations to be performed, without repairing or replacing said locking device, or without removing said hatch beam.

3. That both parties well knew or should have

known from experience that a hatch beam totally lacking in locking devices could be easily and upon even slight contact with the bridle and hook, used in loading and unloading, became dislodged and fall and cause serious injury to any person upon whom said hatch beam might fall.

4. That the concurring negligence of the shipowner went well beyond a mere passive act of negligence based on its non delegable duty to furnish a seaworthy ship and a safe place to work.

5. Although Mr. Williams' (the stevedore) injuries proximately resulted from the joint and concurring negligence of the ship (plaintiff) the stevedoring company (defendant), plaintiff's demand for indemnity against the defendant must be denied upon the authority of American Mutual Liability Ins. Co. vs. Mathews, 182 Fed. 2d, 332, 2 Cir., and Halcyon Lines vs. Haenn Ship Refitting Corp., 342 U.S. 382.

6. That plaintiff is not entitled to recover from the defendant, upon its action for indemnity.

7. That judgment be entered herein, upon these findings of fact and conclusions of law for the defendant.

8. That each party pay their own costs in this action incurred.

Dated: This 1st day of August, 1955.

/s/ MICHAEL J. ROCHE,
Chief Judge, United States District Court

[Endorsed]: Filed August 1, 1955.

In the United States District Court for the Northern District of California, Southern Division

No. 34067

AMERICAN PRESIDENT LINES, LTD., a corporation, Plaintiff,

vs.

MARINE TERMINALS CORPORATION, a corporation, Defendants.

JUDGMENT ON FINDINGS OF COURT FOR DEFENDANT

The above cause came on for trial on the 8th day of June, 1955, and was duly submitted for consideration and decision, and the Court, after due deliberation rendered its decision, and on the 1st day of August, 1955, made and filed its findings of fact, conclusions of law, and order for judgment.

Now, Therefore, pursuant thereto, it is determined by the Court that plaintiff take nothing by this action and that each party bear its own costs.

Dated: August 1st, 1955.

/s/ MICHAEL J. ROCHE,
Chief Judge, United States District Court

Acknowledgment of Service attached.

[Endorsed]: Filed August 1, 1955. Entered August 2, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that American President Lines, Ltd., Plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on August 2, 1955.

Dated August 30, 1955.

/s/ LILLICK, GEARY, OLSON, ADAMS & CHARLES,
/s/ EDWIN L. GERHARDT,
/s/ GORDON L. POOLE,
Attorneys for Appellants American President Lines, Ltd.

[Endorsed]: Filed August 30, 1955.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Whereas, American President Lines, Ltd., Plaintiff herein, have prosecuted or are about to prosecute an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment made and entered August 2, 1955, by the District Court of the United States for the Northern District of California, Southern Division.

Now, Therefore, in consideration of the premises, the undersigned, Fidelity and Deposit Company of

Maryland, a corporation duly organized and existing under the laws of the State of Maryland and duly authorized and licensed by the laws of the State of California to do a general surety business in the State of California, does hereby undertake and promise on the part of American President Lines, Ltd., Appellant, that they will prosecute their appeal to effect and answer all costs if they fail to make good their appeal, not exceeding the sum of Two Hundred Fifty and No/100 Dollars ($250.00), to which amount said Fidelity and Deposit Company of Maryland acknowledges itself justly bound.

And further, it is expressly understood and agreed that in case of a breach of any condition of the above obligation, the Court in the above entitled matter may, upon notice to the Fidelity and Deposit Company of Maryland, of not less than ten (10) days, proceed summarily in the action or suit in which the same was given to ascertain the amount which said Surety is bound to pay on account of such breach, and render judgment therefor against it and award execution therefor.

Signed, Sealed and Dated this 30th day of August, 1955.

[Seal] FIDELITY AND DEPOSIT COMPANY OF MARYLAND,

/s/ By ERBON DELVENTHAL,
Attorney-in-Fact

Notary Public's Certificate attached.

[Endorsed]: Filed August 30, 1955.

[Title of District Court and Cause.]

STIPULATION EXTENDING TIME TO FILE RECORD AND DOCKET APPEAL

It is hereby stipulated and agreed, by and between the attorneys for the parties hereto, subject to the order of the court, that the time within which plaintiff-appellant shall file the record on appeal and docket the appeal from the judgment entered herein on August 2, 1955, in the United States Court of Appeals for the Ninth Circuit be extended to and including November 28, 1955.

Dated: October 4, 1955.

/s/ LILLICK, GEARY, OLSON, ADAMS & CHARLES,
Attorneys for Plaintiff-Appellant
/s/ BOYD & TAYLOR,
/s/ By FREDERIC G. NAVE,
Attorneys for Defendant-Appellee

So Ordered: October 7th, 1955.

/s/ MICHAEL J. ROCHE,
United States District Judge

[Endorsed]: Filed October 7, 1955.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Appellant, American President Lines, Ltd. designates the entire record pursuant to Rule 75, Federal

Rules of Civil Procedure, including the reporter's transcript and all exhibits.

/s/ LILLICK, GEARY, OLSON, ADAMS & CHARLES,
/s/ EDWIN L. GERHARDT,
/s/ GORDON L. POOLE,
Attorneys for Appellant, American President Lines, Ltd.

Acknowledgment of Service attached.

[Endorsed]: Filed November 16, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorneys for the appellant:

Complaint for Indemnity.

Notice of Hearing and Motion to Dismiss by Defendant.

Memorandum and Order of Court Denying Motion to Dismiss.

Answer of Defendant.

Substitution of Counsel for Plaintiff.

Notice and Motion by Plaintiff to Amend Complaint.

Order Granting Leave to Amend Complaint and for Answer to Stand as Answer to Amended Complaint.

First Amended Complaint for Indemnity.

Memorandum Opinion of Court for Judgment for Defendant.

Proposed Findings of Fact and Conclusions of Law by Plaintiff.

Findings of Fact and Conclusions of Law.

Judgment.

Notice of Appeal.

Appeal Bond.

Stipulation and Order Extending Time to Docket Record on Appeal.

Designation of Record on Appeal.

Reporter's Transcript of Trial Proceedings June 8, 9, 10 and 13, 1955.

Plaintiff's Exhibits: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 23 (22 withdrawn on stipulation) and 24.

Defendant's Exhibits A and B.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 25th day of November, 1955.

[Seal] C. W. CALBREATH,
Clerk

/s/ By MARGARET P. BLAIR,
Deputy Clerk

In the United States District Court for the Northern District of California, Southern Division

No. 34067

AMERICAN PRESIDENT LINES, LTD.,
Plaintiff,

vs.

MARINE TERMINALS CORPORATION,
Defendant.

TRANSCRIPT OF PROCEEDINGS
June 8, 9, 10, 1955

Before: Hon. Michael J. Roche, Judge.

Appearances: For the Plaintiff: Lillick, Geary, Olson, Adams & Charles, by Edwin L. Gerhardt and Gordon L. Poole. For the Defendant: M. K. Taylor and Frederic G. Nave. [1*]

Mr. Gerhardt: If Your Honor please, we have stipulated on the introduction of certain documents into evidence, and for the purpose of the record I should like to recount those exhibits in the order in which they are to be introduced.

Exhibit 1, Your Honor, is the first diagram, a vertical section through the ship, showing the three hatch levels in No. 1 hatch.

(The diagram referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 1.)

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* Page numbers appearing at top of page of original Reporter's Transcript of Record.

Mr. Gerhardt: Exhibit No. 2 is the horizontal section, the bird's eye view of the No. 1 lower tweendeck hatch.

(The diagram referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 2.)

Mr. Gerhardt: Exhibit No. 3 is an illustration of the bridle and hook and the contact it made with the No. 2 strongback at the lower tweendeck level.

(The diagram referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 3.)

Mr. Gerhardt: Exhibit 4, Your Honor, is a photograph taken recently. As a matter of fact, Exhibits 4 through 9 are all recent photographs taken aboard the President Polk at No. 1 hatch for the purpose of illustrating construction of beams, the position of hatchboards, and so forth. [3]

Exhibit No. 4, Your Honor, is a photograph showing the No. 1 hatch, and at the forward end of the hatch the winch driver in place at the controls in a position where he is looking down into No. 1 hold.

(The photograph referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 4.)

Mr. Gerhardt: Exhibit No. 5 is a view of the upper tweendeck, or shelter deck hatch, showing the hatch boards in position across the queen beam and resting at either end in the king beams.

(The photograph referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 5.)

Mr. Gerhardt: Exhibit No. 6, Your Honor, is a photograph of a typical strongback in No. 1 hatch showing the locking device or safety device on one end of the strongback in an open or unlocked position.

(The photograph referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 6.)

Mr. Gerhardt: Exhibit No. 7 is the same strongback from the same side and end showing the safety latch in a locked or closed position.

(The photograph referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 7.)

Mr. Gerhardt: Exhibit No. 8 is a view of the same end of the same strongback, but the other side showing the nut and [4] bolt or pin which holds the safety lock in place from the other side.

(The photograph referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 8.)

Mr. Gerhardt: Exhibit No. 9, Your Honor, is a photograph showing the slot or cleat at the side of the hatch opening into which the end of the strongback or beam fits.

(The photograph referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 9.)

Mr. Gerhardt: Exhibit No. 10, Your Honor, is a photograph also taken on the President Polk on January 30th, 1952 but a few hours after the accident had occurred. This photograph is taken from the maindeck level looking down into the hold, and if I may be permitted to explain that while Your Honor reviews it, and for the record, this area——

The Court: Do you wish to come up here?

Mr. Gerhardt: This area at this side indicates the level of the hatch at the main deck. Then next is the shelter deck or upper tweendeck area with the opening in the beams removed from the first section and from part of the second section, but with both sections of strongbacks, the No. 1 section and the No. 2 section of the strongbacks removed.

The next level in the photograph is the lower tweendeck showing the barrels of oil stowed in the wings or at the side of the tweendeck space, showing the No. 2 strongback out of [5] the slot, and only the open slot or cleat on the side of the hatch.

No. 3, the queen beam still in place but with the hatchboards having been removed from the second section between No. 2 and No. 4.

The Court: This is the king and this is the queen?

Mr. Gerhardt: What you are pointing to are some dunnage boards in the lower hold, but the king beam was located here, and then the hatchboards rested on the edge here beneath, in the side of that king beam to the top of the queen and over this king beam, which is No. 4.

Then the next level, Your Honor, showing the

drums on the lower hold itself where Mr. Williams was working at the time.

The Court: Is this one shot?

Mr. Gerhardt: That is one shot.

(The photograph referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 10.)

The Court: Any questions?

Mr. Taylor: No. It is our understanding that picture was taken the day of the accident some time later.

Exhibit No. 11, Your Honor, is a report from the Pacific Maritime Association with respect to the hours' work and the earnings of Robert Williams per quarter beginning in 1950, January 1st, and ending on May 29th of 1955.

The Court: It will be admitted and marked. [6]

(The report referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 11.)

Mr. Gerhardt: Plaintiff's Exhibit No. 12 is the record of St. Mary's Hospital, which was subpoenaed, and which was left with counsel and with the clerk this morning pursuant to stipulation.

(The hospital record referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 12.)

Mr. Gerhardt: Exhibit No. 13 is an x-ray bill in the amount of $46.50, which was paid directly by Mr. Williams and not by his employers, Marine Terminals Corporation.

(The x-ray bill referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 13.)

Mr. Gerhardt: Exhibit No. 14 is the hospital bill showing the proportion to be paid by the compensation insurance carrier for Marine Terminals and the part to be paid by Mr. Williams, his proportion being $139.60, and the insurance company's proportion being $1,608.15.

The Court: That is marked what?

The Clerk: 14.

(The hospital bill referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 14.)

Mr. Gerhardt: No. 15 is a medical bill of Dr. Rodney A. Yoell, who treated Robert B. Williams, and which bill is in [7] the amount of $266.75, and which was paid directly by Robert B. Williams.

(The medical bill referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 15.)

Mr. Gerhardt: Exhibit No. 16 is the stevedoring contract between American President Lines, the plaintiff, and the Marine Terminals Corporation, the defendant, dated September 30th, 1950, and in effect at the time this accident occurred.

(The contract referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 16.)

Mr. Gerhardt: Your Honor, there is one further offer which I wish to make at this time. I have here

ıe Pacific Coast longshore agreement covering the ɜriod between 1951 and 1953 and the copy of the acific Coast Marine Safety Code dated 1949 which as referred to in the Pacific longshore agreement, ıd which was effective at the time of this accident ı January 1952. We have discussed this matter, our Honor, from the standpoint of the necessity f subpoenaing some official or representative to stify that those are the agreements and that those greements were in effect. I understand Mr. Taylor as no objection to stipulating to that extent. Is ıat correct?

Mr. Taylor: That is correct, Your Honor. Our ɔjection is not based on the failure to lay a foundaon. Our objection [8] is they are irrelevant, inɔmpetent and immaterial. I would like to explain ıat a little further. It is our position that the legal ability of the defendant and the plaintiff toward ıe stevedore himself is defined by law and not deıed by laws that are set down here, and I do not ıink the rules are the exclusive guides to be folwed by Your Honor, and that is the reason for ır objection. It is not based upon the basis of the ıct. We will stipulate that those are in existence ıd they would be properly identified.

The Court: Let them go in for purposes of idenfication to be used by either side. That will give ɔth sides an opportunity to protect the record.

(The agreement referred to was thereupon marked Plaintiff's Exhibit No. 17 for identification.)

(The Safety Code referred to was thereupon marked Plaintiff's Exhibit No. 18 for identification.)

Mr. Gerhardt: We have one or two further stipulations, Your Honor, not covered by documents. It has been stipulated between counsel that the compensation carrier for Marine Terminals Corporation pay the following amounts: $490 to Robert B. Williams in compensation and $1,991.90 in medical expenses up to the date when Robert B. Williams filed his notice of election to sue American President Lines, at which time the compensation payments were stopped. That is subject to some further correction, Your Honor, but those are the [9] figures Mr. Taylor has furnished me to date, and we are accepting those for that purpose at this time.

Mr. Taylor: So stipulated, Your Honor.

The Court: Subject to correction, let them be admitted and marked next in order.

Mr. Gerhardt: Then, Your Honor, we have stipulated that the plaintiff American President Lines was incorporated under and by virtue of the laws of the State of Delaware; that the defendant Marine Terminals Corporation was incorporated under and by virtue of the laws of the State of Nevada.

Mr. Taylor has also asked me to stipulate, and I agreed to do so, that when Mr. Williams filed his suit in the State Court against the American President Lines, American President Lines did not in turn make demand upon Marine Terminals Corporation to come in and defend that suit. We still

have a question between us as to the notification to Marine Terminals regarding the settlement, but so far as the written demand to them to come in and defend the suit is concerned, it is stipulated that that was not made.

The Court: Let the record so show.

Mr. Gerhardt: Have you any other documents, Mr. Taylor?

Mr. Taylor: Not at the present time.

Mr. Gerhardt: We are ready to proceed.

The Court: Is there any other stipulation that you might enter into? [10]

Mr. Taylor: No, we stipulated to the items mentioned by counsel.

The Court: Very well. Let the record so show.

Call your first witness.

Mr. Gerhardt: Call Mr. Williams.

ROBERT B. WILLIAMS

called as a witness on behalf of the plaintiff, and, being first duy sworn, testified as follows:

Examination by the Court

Q. What is your full name?

A. Robert B. Williams.

Q. You will have to speak up loud enough so the reporter will be able to hear you and the attorneys on both sides. Sit back in the chair. Where do you live?

A. 3106 Tremont Street, Berkeley.

Q. Your business or occupation?

A. Longshoreman.

(Testimony of Robert B. Williams.)

Q. How long have you been so engaged?

A. For about ten years, better than ten years.

Q. All that time here?

A. Yes, Your Honor.

Q. Did you work in any other port?

A. No, I have not.

The Court: Take the witness. [11]

Direct Examination

Mr. Gerhardt: Q. Are you married, Mr. Williams? A. Yes, I am.

Q. How long have you been married?

A. For about eleven years.

Q. Do you have any children?

A. Yes, I do.

Q. How old are they?

A. I have a daughter that is past 10.

Q. Any other children?

A. We adopted a foster child.

Q. And how old is he or she?

A. She is past 11.

The Court: Q. Pardon me. How long have you been in California? A. Since April 1945.

Q. Where did you live formerly?

A. Texas.

Q. What is your business or occupation here, if any? A. A presser.

Q. You went to school up to what age?

A. Ninth grade, Booker T. Washington, Wichita, Texas.

Mr. Gerhardt: Q. Mr. Williams, on January

(Testimony of Robert B. Williams.)

30th, 1952, were you part of a stevedoring gang engaged in operations aboard the President Polk docked in San Francisco? [12] A. Yes.

Q. What was your job at that time?

A. We were loading drums, working in the lower hold of the President Polk.

Q. What lower hold, do you remember?

A. No. 1.

Q. What kind of drums were you loading?

A. They were oil drums.

Q. Do you know about how many pounds or what their weight was? A. No, I do not.

Q. How were these drums being loaded? That is, what method was used? What bridle arrangement? Mr. Williams, let me call your attention to our Exhibit No. 3, showing a bridle with a loop at one end and a hook part way up the bridle. Would you say that is approximately the type of bridle you were using at the time? A. Yes.

Q. How was that used, Mr. Williams? How do you fasten it around the drums or take it off the drums after they have been loaded?

A. The winch driver, he hoists four drums from the dock to the hold. There are two slings similar to the one that is on the map there.

Q. When you say two slings, I take it you mean from one [13] set of falls there is an arrangement whereby two of these bridles are suspended?

A. Correct.

Q. Go ahead.

A. There are two men that are attached to the

(Testimony of Robert B. Williams.)

dock. They wrap one sling around two drums and the other sling around two more drums and the winch driver, when he gets the signal from the dock, hoists them up into the hold, where four men unhook them.

Q. When you say he puts them around the drums, I take it you mean after placing it around the drums he hooks this loop over the hook on the bridle? A. Yes.

Q. By the way, you were in the No. 1 lower hold yourself? A. Yes.

Q. Do you remember who your partner was?

A. A fellow by the name of Carl Smitty.

Q. Do you remember who the other men down there were? A. No, I do not.

Q. When the drums were lowered, then, you and Smith were a team and as a team you would unhook the bridle from the drums, is that correct?

A. Yes.

Q. Do you recall about how many of these drums had been unloaded before your accident? [14]

A. I have no recollection of how many.

Q. Will you tell the Court what happened at the time you were injured?

A. I myself proceeds to unhook the two drums that had been lowered into the lower hold of the President Polk, No. 1 hatch. I attempts to steady the bridle. The winch driver sits back on the levers. He goes ahead, and before I know anything the hook that is on that cable hooked into the beam, and before I knew anything the beam had struck me.

Testimony of Robert B. Williams.)

Q. When you said the hatch driver goes ahead, ou mean he raised the bridle?

A. After the bridle had been released from the wo drums.

Q. Do you know who the winch driver was?

A. No, I do not.

Q. Was he a member of your same gang?

A. Yes.

Q. He was a member of the gang sent aboard y Marine Terminals Corporation? A. Yes.

Q. Did you actually see the hook catch in the eam? A. No.

Q. When did you first notice the beam falling?

A. It made a noise—when the hook hit the beam, he made a noise. I looked. I attempt to jump and he beam hit me. It happened just that quick.

Q. Do you know which end of the beam hit you r what part of the beam?

A. The ship was facing—it would be the left side f the beam.

Q. The left side of the beam facing forward?

A. Yes.

Q. Or aft?

A. The ship—the bow was headed toward the Bay.

Q. When did you first go aboard the President Polk?

A. The 30th, I think. I am not sure.

Q. With respect to the day of your accident, had you gone aboard that morning for the first time or had you been aboard the day before?

(Testimony of Robert B. Williams.)

A. The first time was that morning, the day I got hurt.

Q. When you went aboard, Mr. Williams, did you and your gang have anything to do with the removal of any of the strongbacks or the hatchboards?

Mr. Taylor: Your Honor, we will object to what anybody else might have done unless it was done in the presence of Mr. Williams.

Mr. Gerhardt: Q. Did you or anyone in your presence while you were aboard that morning remove any strongbacks or hatchboards in order to get into one hold or the other?

A. Not that I can recall.

The Court: Q. Pardon me. What time did you go aboard [16] the ship?

A. We turned to at 8:00 o'clock, Your Honor.

Mr. Gerhardt: Q. This accident was about what time?

A. Between 9:30 and 10:00 o'clock.

Q. What did you do right after you went aboard, do you remember?

A. We had to secure some oil drums which were upon the next deck above us.

Q. Mr. Williams, will you come down to this blackboard, please.

The Court: Is he familiar with the diagram?

Mr. Gerhardt: I have not shown it to him. I do not believe he is.

The Court: I think it would be well to familiarize him with the diagram.

(Testimony of Robert B. Williams.)

Mr. Gerhardt: Q. Mr. Williams, this vertical section showing the main hatch opening, the shelter deck or upper tweendeck opening, the lower tweendeck opening and the lower hold. Will you point out on the diagram where you were securing these drums of the cargo?

A. There (indicating).

Mr. Gerhardt: With counsel's and the Court's permission, I will mark that W-1.

The Court: Let the record so show.

Mr. Gerhardt: Q. While you are down in this position, [17] Mr. Williams, would you point out to the Court where you were working at the time you were struck by this strongback?

(Witness complied.)

Mr. Gerhardt: I will mark that with an X and W-2.

Q. Now, Mr. Williams, let me call your attention to Plaintiff's Exhibit No. 2, which is a horizontal section or bird's eye view looking down into the tweendeck space, showing the No. 1 strongback removed, and the first section of hatchboards and the No. 2 strongback still in place. Was that the situation and condition that existed while you were working in the lower hold at the time of this accident?

Mr. Taylor: I think that is too leading.

The Court: If he knows, he may answer.

A. Yes.

Mr. Gerhadt: Q. Mr. Williams, on Exhibit 1 we have marked the position where you state you were

(Testimony of Robert B. Williams.)

securing some oil drums in the lower tweendeck. Under whose orders or instructions were you doing that work? A. The gang steward.

Q. What did you do? Where did you move the drums or how did you secure them?

A. We removed them by spreading them out. They appeared to be in a sort of bunch, like, and we placed dunnage, secured them with a rope.

Q. Were they out on hatchboards or were they off in the wing [18] in the lower tweendeck?

A. They were, I would say, within a foot of the coaming in the wing.

Q. In the wing within a foot of the coaming?

A. Yes.

Q. You received orders from the gang steward to proceed to move these drums and secure them in place? A. Yes.

Q. What was the reason for that?

A. Because they were unsafe. They were too close to the hatchcoaming. After protesting with the walking boss——

Q. What do you mean by protesting with the walking boss?

A. He didn't approve of us removing them? I think he accused us of slowing the operation.

Mr. Taylor: Your Honor, I object to this as being hearsay and ask that it go out.

The Court: It may go out.

Mr. Gerhardt: Q. How long did it take to move those oil drums?

Testimony of Robert B. Williams.)

A. Between 35 and 40 minutes.

Q. After you finished securing those oil drums n the wings of No. 1 lower tweendeck, where did ou go?

A. We went in the lower hold and proceeded o loading oil drums.

Q. And that is what you were doing at the time he bridle [19] caught on No. 2 strongback in the ower tweendeck hatch and dropped it into the hold, s that right?

Mr. Taylor: I think that is assuming something ot in evidence. I will object to it on that ground.

Mr. Gerhardt: I think he has already answered hat, counsel.

The Court: Just a moment. The objection will ave to be sustained.

Mr. Gerhardt: Will you read that question?

(Question read.)

The Witness: Yes.

Mr. Taylor: Just a minute. I will move that the nswer be stricken pending a ruling on the ob- ection.

The Court: Reframe the question. I will sustain he objection.

Mr. Gerhardt: Q. After you secured the drums n the lower tweendeck, Mr. Williams, where did ou go?

A. We went to the lower hold, down in the lower old.

Q. What were you doing in the lower hold?

(Testimony of Robert B. Williams.)

A. Loading drums.

Q. Do you know how many drums you loaded?

A. No, I don't know how many we had loaded, but there were quite a few of them.

Q. What were you doing at the exact time of the accident?

A. I was unhooking two drums that the winch driver had [20] lowered into the hold.

Q. Those were two of the drums that you and your partner were placing in the lower hold, is that right? A. Yes.

Q. After you had unhooked the bridle, what did you do?

A. I attempted to steady the sling.

Q. Did you steady it?

A. I steadied it a little bit. I made the best effort I could.

Q. Then what did you do?

A. I attempted to look up, and when I attempted to look up, at the same time that I looked up the hook had hit the beam and the beam fell, striking me.

Q. Were you removed from the hold?

A. Yes.

Q. Where were you taken?

A. Harbor Emergency; from there to St. Mary's Hospital.

Q. Were you unconscious at any time?

A. No.

Q. Do you know where you were in that hold

Testimony of Robert B. Williams.)

vith relation to the beam that fell? Were you ıear it? A. I was near it.

Q. How were you removed from the vessel?

A. They have a safety basket on most of the locks, and when you get hurt you are placed in this afety basket to the dock [21] and to a waiting ımbulance.

Q. You were taken first to Harbor Emergency?

A. Harbor Emergency.

Q. How long were you there?

A. I was there some 45 minutes.

Q. What injuries did you sustain? What part ›f you hurt at the time?

A. My left side of my hip here, the small por-ion of the back, close to the spinal cord. At the ime that I got hurt, I didn't know what it was. All I know, I couldn't move. I was in severe pain, and ater on I learned from the doctor——

Mr. Taylor: We will ask that that be stricken ıs hearsay.

Mr. Gerhardt: We will prove through the doctors he injuries, Your Honor.

Q. When you were taken to St. Mary's Hospital, vere you placed in bed? A. Yes, I was.

Q. Then what treatment were you given there?

A. First they gave me some kind of a shot to ›ort of calm my nerves. Later on they gave me heat treatments, and seven days later I was placed in a cast.

Q. What kind of a cast?

A. It was a plaster cast.

(Testimony of Robert B. Williams.)

Q. What parts of your body? [22]

A. From my hips all the way around up to the top of my chest.

Q. How long did you keep that on?

A. Nearly four months.

Q. How did you feel during that period?

A. Very uncomfortable.

Q. Where? What parts of your body?

A. My hip, pelvis, my vertebras, my leg, I could hardly move.

Q. Which leg, Mr. Williams?

A. The right one.

Q. Were you in bed all that four months' period? A. Yes, I was practically.

Q. When you first got out of bed were you able to walk?

A. When I first got out of bed, he didn't permit me to get out of bed immediately after the cast was removed. I was permitted to sit alongside the bed and swing my feet, and I was given therapy treatments. The instructor informed me to take what exercises I could in bed in order to enable me to walk.

Q. Did you perform this exercise?

A. I did.

Q. What were the consequences of performing those exercises? How did you feel in doing that?

A. I felt pain in my hip.

Q. Any place else? [23]

A. My back.

Q. Any place else?

Testimony of Robert B. Williams.)

A. No, those are the only ones.

Q. How long a period of time did you perform hose exercises?

A. For about a month.

Q. Then were you able to get out of bed, on rutches, in a wheel chair, or just what did you do hen?

A. From the wheel chair to crutches.

Q. By the way, this period of time that you vere in a wheel chair, how long was that?

A. I can't quite recollect.

Q. When you went from the wheel chair to the rutches, what was your physical condition at that ime? How did you feel?

A. I still had severe pain in my hip, pelvis, that othered me.

Q. What kind of a pain was that? Was it contant?

A. It was a constant pain. I can't quite explain ow it felt. It was like someone would punch you vith a pair of pliers, come down, get a hunk of heat and squeeze it.

Q. How long were you on the crutches?

A. I don't know how long I was on the crutches.

Q. Were you still on the crutches when you vere released from the hospital? A. Yes.

Q. When you were released from the hospital, id you go home? A. Yes.

Q. Do you remember the date when you were ble to discard the crutches?

A. No, I do not.

(Testimony of Robert B. Williams.)

Q. Did you use any other device after the crutches? A. A cane.

Q. Do you remember how long you used the cane? A. No, I do not.

Q. Will you describe to the Court your condition while you were using the cane?

A. My condition while I was using the cane?

Q. Yes.

A. I still had the pain in my hip at the time that I was using the cane.

Q. How about the back?

A. I would get pains occasionally in the back.

Q. When would those come on, Mr. Williams?

A. Mostly in the afternoon when I would get ready to retire to bed.

Q. How long would they last?

A. For a period of two or three hours.

Q. How about sleep? Did you sleep soundly every night, or what was the situation?

A. Not every night, because Dr. Yoell had to give me some [25] liquid medicine for my nerves.

Q. You were under the care of Dr. Yoell during that period, were you? A. Yes.

Q. How often did you take this medicine?

A. I can't recall just how often it was.

Q. Were you given any other medication or pills? A. No.

The Court: Q. Do you know how long you were in the hospital? A. Yes.

Q. How long? A. Four months.

Mr. Gerhardt: Q. When were you able to return to work the first time?

(Testimony of Robert B. Williams.)

A. I was off 14 months. I am not positive, but I think it was April 6th when I returned to work.

Q. Of 1953? A. 1953.

Q. Did you feel like going back to work at that time? A. No, I didn't, but conditions——

Q. What do you mean by "conditions"?

A. I have a wife and daughter to support and I had pending bills, paying for my home.

Q. Did you work steadily after that? [26]

A. No, I did not.

Q. How long did you work?

A. Well, the best of my recollection is something like two or three days a week, and then I would have to take off.

Q. How long did you take off?

A. Three to four days; sometimes a week.

Q. Over what period of time did that last?

A. That still last as of now. Occasionally I have to take off on account of my health.

Q. What do you mean, on account of your health, Mr. Williams? A. My injury.

Q. How often do you have to take off?

A. Well, it is practically every week. I take from three to four days off.

Q. Prior to the time of this accident were you working steadily during the week?

A. Before I got hurt?

Q. Yes. A. Yes.

Q. Are you doing the same type of work now that you did before the accident?

(Testimony of Robert B. Williams.)

A. No, I am not working on any ships any more. I am working in cars on the dock.

Q. How does that type of work differ from the shipboard work? [27]

A. It is safer. You don't have objects swinging over your head. It is lighter work. There is more of a rest period involved, which helps.

Q. What about lifting weights? Do you have as much of that to do?

A. Yes, practically as much.

Q. Practically as much lifting?

A. Yes.

Q. How about the climbing?

A. There is no climbing involved at all.

Q. How do you feel today, Mr. Williams?

A. My hip still bothers me on a change of weather.

Q. Where does your hip bother you?

A. In the fat part, in the back, I would say.

Q. On the right side?

A. On the right side.

Q. How does that bother you, Mr. Williams?

A. There is a sort of an ache involved.

Q. How often does that come on?

A. Practically every week.

Q. How long does it last?

A. Until I retire to bed. Lots of times I have to get in bed in order to get relief.

Q. Did you take any medication for that now?

A. None other than hot baths occasionally and rest. [28]

(Testimony of Robert B. Williams.)

Q. What other complaints do you have about your present condition?

A. I can't sit long on something hard, and when I do, I am moving from one side to the other in order to get relaxation. I can't sit in one spot and drive an automobile any length of distance.

Q. Why is that? What complaint do you have about driving?

A. It is because I am tired across the back here, the muscles in the lower part of my back, the coccyx bone and pelvis aches.

Q. When does that come on, if you do any driving or sitting?

A. For instance, when I get ready to take a trip, which we usually do sometimes, or riding on a Sunday during the afternoon, that is when I am usually bothered, and if I attempt to do any strenuous work around the house, such as landscaping, picking and digging, it bothers me.

Q. What other complaints do you have?

A. Occasionally my nerves get on edge and I have to retire or relax to bed—retire to the bed.

Q. Has there been any change at all in your marital relations with your wife? A. Yes.

Q. To what extent?

A. Well, sometimes I just get nervous and I can't stand noise. It bothers me. [29]

Q. How about your sleeping habits? Have those changed any? A. Slightly.

Q. To what degree or extent?

A. It is just hard to rest on account of my ner-

(Testimony of Robert B. Williams.)

vous condition. It makes it quite difficult at times to rest, but I usually try to force myself because I know it does me good.

Q. You were how old at the time this accident occurred?

A. 30, I think, or 31.

Q. Have you ever had any prior accidents or injuries of any serious consequence?

A. Before the accident?

Q. Before this occasion in January 1952?

A. No.

Q. How was your health prior to that time?

A. I was in perfect health before I got hurt.

Q. Was there any limitation on any of your activities? A. Before the activities?

Q. Yes. A. No.

Q. What kind of activities could you engage in at that time?

A. Practically anything from shoveling, bulky cargo, lifting heavy objects, as rough as it comes.

Q. Did you engage in any sports?

A. Yes.

Q. What? [30]

A. Swimming, weight lifting, a little shadow boxing.

Q. Do you still do that? A. I can't.

Q. How about the swimming?

A. Occasionally I will try.

Q. How about the weight lifting?

A. No weight lifting at all.

(Testimony of Robert B. Williams.)

Q. Mr. Williams, were you a regular member of this gang that was aboard the President Polk on January 30th, 1952?

A. No, I was not.

Q. What were you? A. A plug man.

Q. What is a plug man?

A. A plug man is a guy that goes to the hall from day to day to get his jobs. A gang man is a man who works in the gang and calls his boss or the hall for orders.

Q. On this particular occasion when you went aboard the President Polk, your tab had been selected and you went with this gang aboard, is that right? A. That is true.

Q. Did you make any inspection when you went aboard of the strongback safety latches or locking devices?

A. No, I did not. The only inspection I made pertained to the oil drums up above.

Q. You mean the oil drums in the wings of the lower tweendeck? [31] A. Yes.

Q. Is the inspection of the strongback locking device part of your duties?

A. Yes, it is part of my duties.

Q. Do you have to be instructed to do that or is it part of your regular duties to inspect the safety latches on the strongback?

Mr. Taylor: That has been asked and answered, Your Honor.

(Testimony of Robert B. Williams.)

Mr. Gerhardt: Just a minute. The witness misunderstood the question.

The Court: Let it all go out. Reframe the question and start over.

Mr. Gerhardt: Q. Was it part of your duty to secure the oil drums in the tweendeck wings or were you instructed to do that?

A. I was instructed to do that.

Q. Was it part of your duty to make any inspection or were you instructed to make an inspection?

Mr. Taylor: Of what, counsel?

Mr. Gerhardt: Of anything.

Mr. Taylor: I think it is pretty general. I will object to it on that ground.

Mr. Gerhardt: Q. Were you instructed to make inspections [32] of the strongbacks? A. No.

Q. Is that part of your work, to make inspections of the strongbacks?

Mr. Taylor: That has been asked and answered.

Mr. Gerhardt: No, it has not. It went out.

Mr. Taylor: I do not believe it did.

The Court: I struck it out and told him to reframe his question.

Mr. Taylor: May we have the reporter read the record?

The Court: That went out.

Mr. Taylor: I am specifically directing the Court's attention to the answer in which he said

(Testimony of Robert B. Williams.)

it was his duty to inspect the strongbacks. Did that go out, too, Your Honor?

The Court: Yes.

Mr. Gerhardt: Q. At the time you were aboard the President Polk, Mr. Williams, what were you called? Were you called a watchman? Were you a steward? Were you a hold man, or what were you called? A. A hold man.

Q. A hold man? A. A hold man.

Q. You were not gang boss? A. No.

Q. You were not a walking boss? [33]

A. No.

Q. You were not a winch driver? A. No.

Q. Or a hatch tender? A. No.

Q. You handled cargo in the hold?

A. Handled cargo in the hold.

Q. Did any hatchboards or hatch covers fall when this strongback fell? A. No.

Q. Did you notice what the position or condition of those hatch covers was after the accident?

A. Yes, I could look up because I was laying on my side in the hold after it struck me.

Q. Where were they?

A. They were hanging down over my head like leaves on a tree or limbs.

Q. Were they still in the No. 1 lower tweendeck space? A. Yes.

Q. Were they resting on any beam or could you tell how they were hanging there?

(Testimony of Robert B. Williams.)

A. They were resting on the queen, the center beam there.

Q. Let me count this for you, Mr. Williams. No. 1 beam had been removed, is that right? A. Yes.

Q. No. 2 strongback was still in place?

A. Yes.

Q. No. 3 strongback was still in place?

A. That is the one that the hatches were resting on.

Q. After No. 2 strongback——

A. ——had fell.

Mr. Gerhardt: May I have a moment, if Your Honor please?

The Court: Certainly.

Mr. Gerhardt: Q. Mr. Williams, you filed an action against American President Lines for your injuries aboard the President Polk, is that right?

A. Yes.

Q. Did you make a settlement of that suit and your claim against the American President Lines?

A. Yes.

Q. Mr. Williams, I will hand you a release which is dated January 16th, 1953 and ask you if that is your signature.

A. Yes, that is my signature.

Q. That is the release you signed at that time?

A. Yes.

Mr. Gerhardt: I will ask Your Honor that this be admitted as Plaintiff's next in order.

The Court: Let it be admitted and marked next in order.

Testimony of Robert B. Williams.)

(The release referred to was thereupon received [35] in evidence and marked Plaintiff's Exhibit No. 19.)

Mr. Gerhardt: Q. Mr. Williams, I hand you an merican President Lines, Ltd. check in the sum f $62,500, payable to Robert Williams and Gladtein, Andersen and Leonard as attorneys and ask ou if that is your signature on the back of the heck?

A. Yes, that is my signature.

Q. That is your endorsement, is it?

A. That is my endorsement.

Mr. Gerhardt: I will ask that that be admitted.

The Court: Let it be admitted and marked.

(The check referred to was thereupon received in evidence and marked Plaintiff's Exhibit No. 20.)

Mr. Gerhardt: Q. Mr. Williams, have you any ther complaints with respect to your physical acvities and your physical condition other than the nes that you have told me about this morning?

A. No.

Mr. Gerhardt: You may cross-examine.

Cross Examination

Mr. Taylor: Q. As I understand it, Mr. Wilams, you have told us all of your physical comlaints that you received in this accident?

A. To the best of my ability.

Q. I understood that you were called a plug

(Testimony of Robert B. Williams.)

man on this gang [36] on the day of the accident, is that right? A. Yes.

Q. Was the 30th day of January 1952 the first day you had been with that gang?

A. Yes.

Q. And you were with them that day as a plug man? A. Yes.

Q. I believe you said on the morning of the 30th day of January 1952 you did not make any inspection of the strongback? A. No.

Q. You made no inspection, is that right?

A. No.

Q. You knew from your past experience as a plug man that strongbacks were the beams that went athwartships at the holds? You knew that from your past experience as a longshoreman, didn't you? A. Yes.

Q. And you knew that they had locks on them, is that right? A. Yes.

Q. Was the inspection of the locks on those strongbacks part of your duties as a plug man?

A. It is a part in a certain sense. It is the responsibility of the steward and the gang.

Q. Disregarding the steward and other people, it is part of [37] your duty to be safety conscious, too, is it not? A. Yes.

Q. You say you made no inspection of the strongbacks in that lower hold when you were in the lower hold on the morning of the accident?

A. No.

Testimony of Robert B. Williams.)

Q. Did you look up at all and observe whether r not there were any locks on the strongback?

A. No.

Q. When you were in the lower hold in the po-ition that you have marked "W-2", Mr. Williams, ıow many people were down there at the time of he accident?

A. There were four of us.

Q. Four of you? A. Yes.

Q. All members of the same gang?

A. No.

Q. Was there another gang working in the ower hold?

A. No—yes, they were members of the same ;ang but there were two plug men, myself and ıy partner.

Q. You do not know the names of the other wo men who were down there?

A. Not at present, no.

Q. Was there any other gang working in the ower hold at the time you were injured? [38]

A. There was a gang up in the next deck vorking.

Q. Yes, but with reference to the lower hold——

A. No, we were the only gang that were in the ower hold.

Q. I believe you said that no hatch boards fell?

A. Not that I know of.

Q. And you were not struck by a hatch board?

A. No.

(Testimony of Robert B. Williams.)

Q. This king beam—I think you described it as a king beam, the one that struck you——

A. King or queen.

Q. There is a distinction between them, is there not? A. Yes.

Q. Do you know which it was that fell on you, whether it was a king or a queen beam?

A. I can show you the one.

The Court: Go down and point it out.

Mr. Taylor: Just your recollection on the morning of the accident.

The Witness: This is the beam here that came out of place when the hook hit it (indicating).

The Court: Q. That is a king beam, is it not?

A. King—King or queen, I'm not positive, Your Honor.

The Court: Counsel?

Mr. Taylor: Yes, Your Honor.

The Court: That is a king beam, is it not? [39]

Mr. Taylor: That would be a king beam, yes. That strongback No. 2 would be a king beam.

Q. Did you look at the king beam or the beam that struck you after it struck you to determine what the condition was of the locks?

A. I couldn't. I just looked around at the beam. I knew that it was a beam that struck me. I couldn't get up. I couldn't move.

Q. So you couldn't tell whether it had locks or didn't have locks?

A. No, I could not.

Mr. Taylor: Does Your Honor wish to take a ecess?

The Court: Very well, we will recess.

(Whereupon a recess was taken until 2 p.m. this date.) [40]

ROBERT B. WILLIAMS

esumed the stand.

Cross Examination—(Continued)

Mr. Taylor: Q. Mr. Williams, I believe you ated this morning that the day of your accident as your first day aboard the President Polk, is hat correct? A. I think so.

Q. You say you did not work on the President olk on January 29th, the day before the accident?

A. Not that I can recall.

Mr. Taylor: Do you have the deposition that as taken, counsel? Page 9, lines 14 through 16.

Q. Will you read to yourself, Mr. Williams, on age 9——

Mr. Gerhardt: If Your Honor please, may I ask ounsel to refresh Mr. Williams' recollection re-arding the date that this deposition was taken efore he reads the deposition?

Mr. Taylor: Your Honor, for the purpose of he record, the deposition of Robert Williams was aken in the Superior Court action October 7th, 952, and at that time he was represented by Glad-tein, Andersen and Leonard, and the American President Lines were represented by Treadwell and Laughlin, Mr. Haid being of counsel.

The Court: This deposition was taken when?

(Testimony of Robert B. Williams.)

Mr. Taylor: October 7th. [41]

The Court: Where?

Mr. Taylor: At the offices of Treadwell and Laughlin, Mills Tower, 220 Bush Street, San Francisco.

The Court: Do you remember that? In other words, when you were examined?

The Witness: Would you restate that, please?

Mr. Taylor: Q. Your attorney was Mr. Lloyd McMurray of the firm of Gladstein, Andersen and Leonard, is that correct? A. Correct.

Q. Did Mr. McMurray go with you to 220 Bush Street, the offices of Treadwell and Laughlin, for the purpose of your deposition being taken?

A. Yes.

Q. Do you recall that? A. Yes.

Q. At that time you were under oath?

A. Yes.

Q. I will refer to that same deposition.

Mr. Gerhardt: Page 9, line 14, you said, counsel.

Mr. Taylor: Go back to line 10.

The Court: Read that. Familiarize yourself with it. He is going to cross-examine you on it.

Mr. Taylor: Q. Will you read from line 10 down through line 16?

The Court: Read that to yourself. He is going to examine [42] you in relation to that.

(The witness did as requested.)

The Court: Q. Did you read that?

A. Yes.

Mr. Taylor: Q. Mr. Williams, were those ques-

(Testimony of Robert B. Williams.)

ions asked you and those answers given by you at that time at that deposition?

A. I don't quite have a clear recollection of that.

Q. You say you do not recollect——

The Court: He says he doesn't have a clear recollection of that.

Mr. Taylor: May I read this, Your Honor?

The Court: Yes.

Mr. Taylor: (Reading) "Q. When you went to the President Polk to go to work——"

We might as well fix those dates while we are about it. You were hurt on January 17th, 1952, is that correct? A. Yes.

Mr. Taylor: "Q. So on January 29th, when you got down to the President Polk, did you and your gang go right to hatch No. 1?

"A. Yes."

Do you recall that you did go to work on the President Polk on the 29th? [43]

A. I can't recall that.

Q. You can't recall that?

A. I cannot.

Q. I will direct your attention to the same deposition beginning at page 10, line 26, through page 10, line 8. Read those to yourself, please. Read those to yourself and I will ask you questions on them, Mr. Williams, starting here down through there.

The Court: Down to what line?

Mr. Taylor: It is marked, Your Honor, through 9.

Q. Have you read that? A. Yes.

(Testimony of Robert B. Williams.)

Q. Were those questions asked of you and those answers given on the day of that deposition?

A. Yes.

Q. They were? May I read them, Your Honor?

The Court: Very well.

Mr. Taylor: (Reading)

"Q. And the first day you were working, which deck were you working in the hatch?

"A. I can't remember.

"Q. Can you remember how many decks there were in that hatch? Was there one, two, three or what?

"A. I can't remember that, either.

"Q. But, in any event, you did spend all day working [44] in No. 1 hatch discharging cargo?

"A. Yes.

"Q. Did you get down to the lower hold the first day, do you remember that?

"A. No, I don't remember that."

Q. Does that refresh your memory, Mr. Williams, that you did work the Polk unloading cargo on January 29th, 1952?

A. January 29th, 1952?

Q. Yes.

A. No, I can only remember the 30th.

Q. You only remember the day of the accident?

A. Yes.

Q. You do not remember working on the Polk the day before? A. No, I do not.

Q. Would you say that you did not work there the day before?

Testimony of Robert B. Williams.)

A. I just can't remember. I mean I do not now where I worked the day before.

Q. How long were you in the lower hold on anuary 30th, the day that you were injured, be-re you were injured?

A. How long was I at work?

Q. How long were you in the lower hold before ou were injured?

A. Well, we started to at 8 o'clock that morn-g.

The Court: Q. What time were you injured?

A . Between 9:30 and 10:00, I think; I am not ositive. [45]

Mr. Taylor: Q. That is between an hour and half and two hours after you started to work the jury was? A. Yes.

Q. You testified you spent some of that time n the 'tween deck? A. Yes.

Q. I want to know how much of the time you ent in the lower hold before you were injured?

A. I can't recollect the amount of time that was ent.

Q. Can you give me approximately how long ou were in the lower hold?

A. No, I can't.

Q. Did you get from the 'tween deck level to e lower hold by means of ladders that morning?

A. Yes, I think I did.

Q. While you were at the 'tween deck level stow-g this cargo, or while you were at the lower hold

(Testimony of Robert B. Williams.)

receiving the drums, did any of the ship's officers or men come down into the hold?

A. Not that I can recall.

Q. Do you recall any? A. No.

Q. Would you say some did but you do not recall it, or some did not?

A. I do not know.

Q. How many drums or loads of drums had come down into the [46] lower hold between the time that you arrived and the time that you were injured?

A. Well, I would say between 50 and 60. I don't know. There were quite a few. I can't testify any particular number.

Q. Between 50 and 60 had been loaded that morning? A. Approximately.

Q. And you had taken part in that loading, is that right? A. Yes.

Q. You and your partner? A. Yes.

Q. On the particular load that came down, the one just before you were injured, did both you and your partner go up to unhook it?

A. My partner, he made an attempt and I unhooked it myself.

Q. I understand you to say there two bridles to one hook, is that right?

A. I only unhooked one. There were two bridles.

Q. You unhooked one? A. Yes.

Q. Who unhooked the other one?

A. I don't know.

Q. Was the other one unhooked?

(Testimony of Robert B. Williams.)

A. The other one was unhooked by someone.

Q. You do not know whether it was Smith or one of the other fellows? [47]

A. Smith was working with me.

Q. You got it unhooked, I assume?

A. Yes. I unhooked the two drums we were to receive, myself.

Q. I believe you said this morning that the sling started to move and you attempted to steady it, is that right? A. Yes.

Q. How did you attempt to steady the sling after the bridle had been unhooked?

A. With one hand, sometimes two.

Q. At that time were you using one hand or two hands to steady it?

A. That particular morning?

Q. Yes.

A. I can't recall whether I used two or one.

Q. In any event——

A. I attempted to check the swing.

Q. The sling was on its way up, is that right?

A. Yes.

Q. I believe you said that you heard a noise of some kind? A. Yes.

Q. What did that sound like? What was this noise that you heard, Mr. Williams?

A. I just heard a ping and then a big roar like a bomb exploding.

Q. But before you heard the bomb exploding you heard a ping? [48]

A. They both happened (the witness snaps his

(Testimony of Robert B. Williams.)

fingers), when the hook hit the strongback I looked up and attempted to jump at the same time.

Mr. Taylor: Your Honor, I ask that that be stricken as to when the hook hit the strongback. It is not responsive to the question.

The Court: I will allow the question and answer to stand.

Mr. Taylor: Q. You say you heard a ping, is that right?

A. I mean there was a ping and a boom all at the same time.

Q. When you heard the ping, that *might* you look up, is that right?

A. When I heard the two noises at the same time.

Q. And you looked up? A. Yes.

Q. When you looked up, what did you see?

A. The beam was falling.

Q. The beam was falling? A. Yes.

Q. I believe you told Mr. Gerhardt this morning that you did not see the hook catch the beam or hook the beam. You did not see that?

A. No.

Mr. Gerhardt: I will let the record speak for itself. I do not recall the particular testimony. I do not think it is necessary to ask the reporter to repeat it back. [49]

Mr. Taylor: Q. To clarify it, it is your testimony, is it not, that you did not see the hook hook onto the beam? A. No, I did not.

Testimony of Robert B. Williams.)

Q. And did you see the hook strike the beam r did you just hear it happen?

A. I heard it happen.

Q. After you heard the ping, just immediately here was, you say, a roar?

A. It was so quick, both at the same time prac-ically.

Q. It was a louder noise?

A. Yes, it was a louder noise.

Q. You looked up?

A. I attempted to look up. I glanced up like hat. I jumped, and I was struck. That is how it appened.

Q. Did you see what it was that struck you efore it struck you?

The Court: The question is, do you know what truck you?

A. Sure, after it had struck me. I mean, I ouldn't——

Mr. Taylor: Q. Is that something you learned efore you were struck or something you learned fter you were lying there?

A. I discovered that the beam had struck me fter I was—it hit me, after it struck me.

Q. You became aware it was a beam after it ad struck you; is that a fair statement? [50]

A. Yes.

Q. You are sure it was not a plank that struck ou? A. I am positive it was not a plank.

Q. Did any plank fall?

A. Not that I know of.

(Testimony of Robert B. Williams.)

Q. Did you tell the doctor at the St. Mary's Hospital that you were struck by a plank?

A. No, I did not.

Q. A doctor came to St. Mary's Hospital and asked you how you were hurt, did he not?

A. Yes, Dr. Yoell did.

Q. Was there an interne there before Dr. Yoell came to ask you how you were hurt?

A. Not that I know of.

Q. Mr. Williams, just where were you standing at the moment you unhooked the bridle and the sling started up?

A. I think it is on the chart there.

Q. You have indicated you were on the lower hold close to, on the chart, the side which would be the left side.

Mr. Gerhardt: The starboard side, counsel.

Mr. Taylor: On the chart it is the left side.

Q. You have indicated right here (indicating)?

A. Yes.

Q. Were you facing aft or were you facing forward, do you recall? [51]

A. The ship's bow was headed this way. We were facing that way (indicating).

Q. You have indicated through your hands that you were facing aft? A. Yes.

Q. You have indicated on the diagram here that you were closer to the starboard side than you were to the port side as you were standing there?

A. Yes.

Testimony of Robert B. Williams.)

Q. Were you able to move at all before you ere struck? A. Before?

Q. Yes. I mean, were you able to take a step n any direction?

A. No, I was not. I didn't have time.

Q. And you went right down to where you were truck?

A. I wouldn't exactly say I went down. I did omething like that. I made an attempt to move.

Q. Who was your gang steward on the morning f the accident?

A. A fellow by the name of Randolph.

Q. Do you remember his first name?

A. No, I do not.

Q. Was he down in the hold, in the lower hold t any time before this injury?

A. Not that I remember.

Q. Do you remember what day you left the hos- ital, Mr. Williams? [52]

A. The 29th of——

The Court: In any event, the record will show.

Mr. Gerhardt: The record shows May 29th.

The Witness: The 29th of May.

Mr. Taylor: Q. You were in the hospital four nonths? A. Practically four months.

Q. How long a time did you have the cast on?

A. Practically all of that time with the excep- ion of ten or twelve days.

Q. I believe you testified this morning, did you not, that the cast was put on after you were in here about seven days? A. Yes.

(Testimony of Robert B. Williams.)

Q. So the cast was put on seven days after you arrived and was taken off how long before you left? Could you tell me any length of time?

A. The cast was taken off April 10th.

Q. I see you are referring to some notes.

A. These are notes I made while I was in the hospital.

Q. So the cast was taken off April 10th, and when did you have your first physiotherapy treatment? A. April 15th, 1952.

Q. And that was at the hospital?

A. Yes.

Q. Did you continue to have physiotherapy at the hospital until you left, is that right? [53]

A. Yes.

Q. When you went home from the hospital you were on crutches, I believe you said.

A. Yes.

Q. How long were you on crutches, Mr. Williams?

A. I don't know. I can't recall. I know I started using crutches.

Q. Do your notes show there what you are referring to?

A. I was given permission to use crutches on the 26th of May.

Q. That was about three days before you left the hospital, is that right? A. Yes.

Q. When did you get off the crutches?

A. That I don't know.

Q. Will you look at page 35, reading line 19

Testimony of Robert B. Williams.)

hrough 23, please? That is the same deposition hat was taken.

Were those questions asked and those answers iven at the time of the deposition, the ones that ou just read?

A. I assume that they were.

Mr. Taylor: (Reading)

"Q. And you used the crutches for about a nonth; then you graduated to a cane?

"A. Longer than that. For about two months.

"Q. Two months on crutches and after that, vhy, you graduated to the cane? [54]

"A. To the cane."

Q. Does that refresh your recollection that you vere on crutches about two months before you tarted using a cane?

A. No, it still does not refresh my recollection. I mean if I don't know, I don't know. That has een quite a while ago.

Q. At the time your deposition was taken could ou walk without a cane? That was October 7th, 952.

A. No, I think I had the cane.

Q. You had it with you?

A. I think I did.

Q. But at that time could you walk without it?

A. Sure, for a short distance I could.

Q. Did you have motion in your back at the ime the deposition was taken? Could you move round? A. Sure.

(Testimony of Robert B. Williams.)

Q. Could you bend over and touch your toes when the deposition was taken?

A. I don't know whether I could or not.

Q. Page 37, lines 20 through 22. Does that refresh your recollection, Mr. Williams, as to whether or not you could bend over and touch your toes at the time of the deposition?

A. I don't know.

Mr. Taylor: (Reading) Line 20:

"Q. How can you do those things? Can you touch your toes when you bend over? [55]

"A. Yes.

"Q. You can? "A. Yes."

Mr. Gerhardt: Just a moment. Your Honor, I hesitate to interrupt here, but those questions were asked in connection with the exercises the doctor was giving to Mr. Williams, and I think if he will refresh Mr. Williams' recollection by reading to him a question or two before that, it is perfectly clear from the testimony that he is not talking about Mr. Williams doing this as a matter of course; he is talking about some exercise that was given to him and what Mr. Williams was doing in reference to these exercises.

Mr. Taylor: Where do you want me to start, counsel?

Mr. Gerhardt: Line 12.

Mr. Taylor: I have no desire to hide anything here. Line 12. May we stipulate it may be read?

Mr. Gerhardt: Certainly.

Mr. Taylor: Page 37, line 12:

(Testimony of Robert B. Williams.)

"Q. How often did you come back to Dr. Yoell? Once every week, once every two weeks or what?

"A. Once or twice a month.

"Q. What does he do when you go back to his office? Just look at you, or what?

"A. Looked at me, asked me how I am feeling. He has had me sit down and cross my legs and he has had me [56] touch my toes and bend and touch my toes."

And then the part I read earlier:

"Q. How can you do those things? Can you touch your toes when you bend over?

"A. Yes.

"Q. You can? "A. Yes."

Q. How did your back feel, Mr. Williams, when your deposition was taken on October 7th, 1952?

A. Well, I still had the pain. I had pain in my hip.

Q. My question was about your back.

A. My back?

Q. Yes. How did your back feel when the deposition was taken?

A. My back felt fair.

Q. That was October 7th, 1952? A. Yes.

Q. When was the last time that you saw Dr. Yoell? A. You mean here lately?

Q. The last time you saw him.

A. The other day I was up at his office.

Q. When was that?

Mr. Gerhardt: That was Monday, counsel.

The Witness: Monday.

(Testimony of Robert B. Williams.)

Mr. Taylor: Q. And that was for an examination? A. Yes. [57]

Q. Did he give you any treatment or just look at you at that time?

A. He looked at me and had me go through a motion of exercises.

Q. When was the last time you saw Dr. Yoell before last Monday? A. I don't know.

Q. Approximately when was it?

A. I still don't know.

Q. Did you see him during the year 1954? That is the year just passed.

A. No, I don't think so.

Q. Did you see him during the year 1953?

A. Yes.

Q. Do you remember the dates in 1953?

A. No, I do not.

Mr. Gerhardt: We are concerned, Your Honor, about this present bill which is Plaintiff's Exhibit 15, which seems to indicate that he did have three visits to Dr. Yoell in 1953. Dr. Yoell will be here later and I presume Dr. Yoell's records will also show. I will ask him to bring the records.

Mr. Taylor: Q. Have you seen any other doctor besides Dr. Yoell for your injury since you left the hospital? A. No, I have not.

Q. Dr. Yoell is the only doctor other than the man who took the X-ray? [58]

A. I went to Permanente for some boils that I had under my arm when I was using the crutches. I saw the doctor then.

(Testimony of Robert B. Williams.)

Q. That was for boils? A. Yes.

Q. Dr. Yoell has been your doctor because of the injury that you received on the President Polk?

A. Yes.

Q. Earlier this morning you mentioned taking exercises for about a month. Were those exercises that you took while you were in the hospital or after you left the hospital, Mr. Williams?

A. In the hospital.

Q. After you left the hospital, did you take exercises? A. A few, yes.

Q. Pardon? A. A few, yes.

Q. How many? A. Well——

Q. Or how frequently?

A. Twice a week.

Q. About twice a week? A. Yes.

Q. I mean did you go some place where a physiotherapist would give you these exercises?

A. No, in my home. [59]

Q. What kind of exercises were they?

A. Well, on the flat of my back, swinging my leg, bending over, attempting to touch my toes, turning my body from side to side.

Q. That was to exercise your hip, your low back and the pelvic region, right? A. Yes.

Q. How often did you take those exercises at home? Over what period of time?

A. About a month.

Q. That would be the month of June 1952, is that correct? A. No.

Q. What month are you talking about?

(Testimony of Robert B. Williams.)

A. This is after I was discharged out of the hospital.

Q. I believe you said that you left the hospital May 29th, 1952. A. Yes.

Q. So that the month that you took the exercises would have been approximately the month of June 1952, is that correct? A. Yes.

Q. You returned to work, you believe, April 6th, 1953, is that correct? A. I believe.

Q. When you returned to work did you continue to work out of the union hall? [60]

A. Yes.

Q. Have you done any work on board a ship since the accident? A. Yes.

Q. What are you doing at the present time, what type of work? A. Car man.

Q. You are on the docks?

A. On the docks.

Q. You have done work inside the ship since the accident? A. Yes.

Q. Is the rate of pay for a man working cars on the dock the same as a man for working inside a ship? A. Yes.

Q. So you are earning the same pay, is that correct? A. Yes.

Mr. Gerhardt: I think there has been an increase in the rate, counsel.

Mr. Taylor: Q. Beginning with the third quarter—say July of 1953, which was about 18 months after your accident—— A. Yes.

Testimony of Robert B. Williams.)

Q. ——from that time on have you been working steadily?

Mr. Gerhardt: If Your Honor please, we have tipulated on the introduction of the Pacific Mari-ıme Association earning records. I think those are ı evidence. They speak for themselves, rather than oing through attempting to have this witness re-onstruct every single quarter. [61]

Mr. Taylor: I am asking whether during that articular quarter he began working steadily.

The Court: The record is here.

Mr. Taylor: It would appear to me the earnings rom that time on are steady. That is why I wanted ɔ clarify it with the witness, if I may be permit-ed to ask him that question.

Will you read the last question?

The Court: Reframe the question.

Mr. Taylor: Q. From July 1st, 1953 on up until he present time you have been working steadily?

A. From July to what?

Q. July 1953. That is 18 months after your ıjury and about three months or four months after ou went back to work.

A. Have I been working steadily?

Q. Yes.

A. Not in my opinion, I have not.

Q. Have you been working every time work as been available? A. No, I have not.

Q. There are times when work would be avail-ble and you would not go to work?

A. That is true.

(Testimony of Robert B. Williams.)

Q. Your earnings have been just as high since that date as they were before the accident, have they not?

Mr. Gerhardt: Let the record speak for itself in that regard, Your Honor. The hours of labor are set forth, the [62] earnings are set forth, and there isn't any record yet on the increase in the hourly pay rates for the last few years.

Mr. Taylor: I think we are entitled to go into this question of whether or not he has worked steadily. He said he has not.

The Court: There is the record that you have stipulated might go in. It is in evidence.

Mr. Taylor: That is right.

The Court: Let it speak for itself.

Mr. Taylor: Q. Have you been doing any lifting since your return to work?

A. Yes, I have.

Q. That is heavy lifting?

Q. What do you call heavy lifting? How heavy?

Q. I will ask you how heavy a load do you lift or have you been lifting?

A. I have been lifting since I went back to work.

Q. You have been lifting heavy loads, have you not?

A. I have been lifting. I wouldn't say heavy loads.

Q. Have you loaded cement and unloaded cement? A. Yes.

Q. Those sacks are 100 pounds, are they not?

A. I know they do.

Testimony of Robert B. Williams.)

Q. You have been doing that since the accident?

A. One or two times, yes, I have. [63]

Q. When you returned? A. Yes.

Q. You said something in your testimony this morning about taking trips. Do you mean automobile trips? A. Yes, that is what I mean.

Q. Where have you gone since the accident, that is, by way of an automobile trip?

A. From here to Los Angeles, from here to Milpitas.

Q. Have you driven to Los Angeles?

A. I usually drive part of the way. My wife drives the rest of the way. Before I got hurt I would drive all the way.

Q. How many trips have you made to Los Angeles since the accident? A. I don't know.

Q. More than three or four?

A. I don't know.

Q. Have you gone any further than Los Angeles? A. Yes, I have.

Q. How much farther? A. Texas.

Q. Have you driven back to your home in Dallas, or your former home?

A. With the help of my wife I have.

Q. How many trips back to Texas have you made since the accident? [64] A. One.

Q. When was that? A. 1953.

Q. Did you make a trip back to Texas before you went back to work, that is, during the period of time that you were off?

A. Not that I know of.

(Testimony of Robert B. Williams.)

Q. Pardon? A. I don't know.

Q. Just one trip to Texas? A. Yes.

Q. Any other trips made by automobile? No trips? A. Not that I know of.

Q. When was the first time you drove a car after the accident? A. I don't know.

Q. Approximately when was it, Mr. Williams?

A. I don't know.

Q. Before you went back to work, was it not?

A. Yes.

Q. Just one more question, Mr. Williams. Going back to the time when you were in the hold, when you heard this ping and you looked up, do you know what caused the ping? Do you know what struck what to cause the ping? A. The hook.

Q. Did you see the hook strike anything?

A. No, I did not. [65]

Q. You just heard a metallic noise, is that correct?

A. I heard the noise and I assumed that the hook struck the beam.

Mr. Taylor: We will ask that that go out as the assumption of the witness, that the hook struck the beam.

The Court: It may go out.

Mr. Taylor: Q. You just heard the noise; that is correct, isn't it?

A. Yes, I heard the noise.

Q. And you did not actually see the hook strike anything, did you? A. No.

Testimony of Robert B. Williams.)

Q. Mr. Williams, do you know why the beam fell n you, of your own knowledge?

A. I was told after——

Q. Excuse me. You can't testify what you were old. Of your own knowledge do you know why the eam fell on you? A. No, I do not.

Mr. Taylor: That is all.

Redirect Examination

Mr. Gerhardt: Q. Mr. Williams, have you ever ead over this deposition that was taken on October th, 1952? A. No, I have not.

Q. You did not see your testimony written up n this form after you gave it on that day in October 1952? [66] A. No, I did not.

Mr. Gerhardt: If Your Honor please, opposing ounsel having used this deposition to refresh the vitness' recollection, I will ask that it be introduced n evidence.

The Court: What is it?

Mr. Gerhardt: Opposing counsel having used his deposition for the purpose of refreshing the vitness' recollection, I will ask that it be introuced in evidence.

The Court: Let it be admitted and marked.

Mr. Taylor: Subject to all legal objections that re available. I would have no other objection than hat. Is it to be marked for identification?

The Court: Yes, to be used by both sides.

(Testimony of Robert B. Williams.)

(The deposition referred to was thereupon marked Plaintiff's Exhibit No. 21 for identification.)

Mr. Gerhardt: Q. Mr. Williams, I noticed today when you came down to the board and when you took the stand and left the stand that you have a limp. Do you have that all the time? A. Yes.

Q. Have you had that ever since the accident?

Mr. Taylor: I think that is leading. I object to it on that ground.

Mr. Gerhardt: Q. Did you have it before the accident? A. No.

Q. When did you first notice that you had a limp? [67]

A. Well, when people see me walking they tell me I limp.

Q. I noticed you carried a pillow up to the stand, Mr. Williams. What was that for?

A. It is this hard chair I am sitting in here.

Q. How often do you take a pillow with you?

A. Usually take it every Sunday to church with me when I have to sit down on hard seats.

Q. Do you make any short trips in your automobile around the Bay Area?

A. Occasionally, yes.

Q. How do you feel when you drive on those trips?

A. I get pain in the lower part of my body, sometimes in the side, from sitting.

Q. And that would be on a trip of about how far in the Bay Area? A. 50 or 60 miles.

Testimony of Robert B. Williams.)

Q. Mr. Williams, some of your medical bills and our compensation was paid by your employers or heir compensation carriers, is that correct?

A. Yes.

Q. Was that stopped at a certain date?

A. Yes, it was.

Q. Do you recall approximately when that was?

A. Compensation was cut off the 7th of May.

Q. Of 1952? [68] A. 1952.

Q. Mr. Williams, I refer you to Plaintiff's Exibit 12, containing a bill from the St. Mary's Hosital, showing one amount paid by insurance and ne amount paid by patient in the amount of 143.75. Did you pay that bill? A. Yes.

Q. And I show you Plaintiff's Exhibit 15, a bill f Dr. Yoell's dated December 15th, 1952, in the mount of $266.75. Did you pay that bill?

A. My attorneys paid the bill. They paid out of he money.

Q. That you received in the settlement?

A. Yes.

Q. I show you an X-ray bill, Plaintiff's Exhibit 3, in the amount of $46.50. A. I paid that.

Q. Mr. Williams, do you recall what you were arning per hour in January 1952?

A. $2.10 or $2.12.

Q. What are you paid per hour now?

A. $2.21, $3.31.

Q. What do you mean by $2.21 and——

A. Straight time and overtime.

Q. $2.21 is straight time and $3.31 is overtime?

(Testimony of Robert B. Williams.)

A. Overtime.

Q. Do you recall what overtime per hour was in January 1952? [69] A. $3.15.

The Court: You can get a stipulation on that.

Mr. Gerhardt: I think we can look that out. We can look that up, Your Honor.

The Court: You may stipulate now.

Mr. Gerhardt: I do not know what it is.

The Court: You do not?

Mr. Gerhardt: No, not at that date.

The Court: Do you?

Mr. Taylor: Not at that date.

The Court: Whenever you ascertain the facts, whatever they may be, you may stipulate.

Mr. Gerhardt: Q. Mr. Williams, you testified on cross examination that you had done some ship work since the accident. Can you estimate for us the amount of ship work as compared with the amount of dock work since the accident?

A. I would say maybe a ship job every two months.

Q. About every two months? A. Yes.

Q. For how long a time? A. One day.

Q. And the rest of the time is dock work, when you do work?

A. The rest of the time is dock work.

Q. In January 1952 you were a member of what union? A. Local 10. [70]

Q. Which one? A. Local 10.

Q. Of what union? A. ILWU Local 10.

Mr. Gerhardt: Your Honor, we have one or two

(Testimony of Robert B. Williams.)

nore stipulations. We have a stipulation that Mr. Williams was 31 years of age at the time of the accident and that his life expectancy was 36 years.

The Court: So stipulated?

Mr. Taylor: So stipulated, Your Honor.

Mr. Gerhardt: Your Honor, we have a stipulation that prior to the accident and the injury to Mr. Williams the safety latch on one end of No. 2 beam, No. 2 strongback, in the lower 'tween deck, was missing.

The Court: So stipulated?

Mr. Taylor: So stipulated.

Mr. Gerhardt: That stipulation, however, Your Honor, is not a stipulation that the plaintiff knew of the missing latch.

Mr. Taylor: One end or both ends?

Mr. Gerhardt: At one end. We have also a stipulation, Your Honor, that the bridle shown in Plaintiff's Exhibit 3 was gear furnished by the defendant Marine Terminals Corporation.

The Court: Let the record so show.

Mr. Taylor: Yes, Your Honor. With reference to the safety latch, whether it was missing at one end or both ends, is [71] something, of course, we do not know. Counsel has indicated it was missing at one end only.

Mr. Gerhardt: I am basing that on a report which is made of one of the longshoreman of Marine Terminals. That is why I am stipulating to it, that it was found before the accident.

(Testimony of Robert B. Williams.)

Mr. Taylor: That is something we ought to have proof on, whether it was one end or two ends.

Mr. Gerhardt: I think we will clear that up when we produce the witness who made the inspection, Your Honor.

The Court: Is that all from this witness?

Mr. Taylor: I have one or two questions on recross, Your Honor.

Recross Examination

Mr. Taylor: Q. You testified that your workmen's compensation or your longshoreman's compensation was stopped about May 7th, 1952? That is correct, is it not, or approximately that date?

A. Yes.

Q. That was because you filed a notice of election to sue, is it not, Mr. Williams?

A. Yes, that is what I was told.

Q. You have not asked Marine Terminals for any compensation since that date, have you?

A. No.

Q. Or any medical expense since that date? [72]

A. No.

Q. Did you have that pillow with you this morning? A. I had a pillow.

Q. Did you take it up to the stand with you this morning? A. No, I did not.

Mr. Taylor: That is all.

Mr. Gerhardt: Q. Did you have the pillow at the time you went up to the stand?

Testimony of Robert B. Williams.)

A. Not this morning. I had one back there I as sitting on.

The Court: We will take a recess.

(Recess.)

MRS. GERTRUDE MARSHALL WILLIAMS alled as a witness on behalf of the plaintiff; sworn.

The Clerk: Q. Will you state your name to the ourt? A. Gertrude Marshall Williams.

Direct Examination

Mr. Gerhardt: Q. Mrs. Williams, where do you eside?

A. 3106 Fremont Street, Berkeley.

Q. You are the wife of Robert Williams, who as just on the stand a few moments ago?

A. I am.

Q. When were you married?

A. We were married June 19th, 1943.

Q. You were married some time then before is injury that he sustained in January 1952?

A. Yes.

Q. Mrs. Williams, what was the state of his ealth and physical condition prior to this injury of anuary 30, 1952? A. Very good.

Q. Have you noticed, or will you please state hat changes you have noticed in his condition since at time?

A. Quite a few changes. He tires very easily, nd he can work on a job, but when he comes home e can't do things he used to around the home. He

(Testimony of Mrs. Gertrude Marshall Williams.)
could do the yard work and everything. Now I do that, to make it light on him so he can work and quite a few other things that he is incapable of doing, personal incapabilities.

Q. Can you give us any examples of those incapabilities?

A. Well, when it comes to things in the yard, he can't kneel too long. He can do anything, but he just can't do it any amount of time. Even if it comes to washing time, he can do it, you know, for awhile, and then he has to stop or he will have to lay down; whereas before he could go on as normally as anybody else.

And then he is quite nervous. He was not before. And he worries about little things that don't make any sense, you know, that you don't have to worry about. But they kind of prey on his mind, little things. Say it is raining too much. He is wondering how you are going to get the wash done, things that are of no consequence. It didn't make any difference [74] whether I washed or not.

Q. Does he complain a great deal to you about his condition?

A. No, he doesn't complain as much. It is just at night he groans. He doesn't sleep well. He turns and tosses and it is pretty hard on him. Sometimes if I ask him, he turns you kind of short. "It is none of your business." You know he is hurting.

Mr. Taylor: I ask that that part go out, "You know he is hurting."

The Court: It may go out.

Testimony of Mrs. Gertrude Marshall Williams.)

Mr. Gerhardt: Q. You may proceed.

A. And then I asked him, "Why are you like his?"

"Knee kind of hurts. If you leave me alone I will be all right."

Q. Does he ever cry? A. Who?

Q. Your husband. A. Not often.

Mr. Taylor: I am sorry, I can't hear.

The Witness: Not often. Just once in awhile. When he says he hurts pretty bad. It isn't the pain, I think. I don't think it's the pain he is crying over. It is little worries.

Mr. Taylor: We ask that the conclusion of the witness go out.

The Court: It may go out. [75]

Mr. Gerhardt: Q. What have you noticed with respect to his outlook or his mental attitude? Has there been any change in that?

A. Not too much. It is just that he worries more, and he is nervous and that kind of upsets everybody.

Q. Mrs. Williams, to what extent does he carry his pillow with him?

A. He takes it anywhere he has to sit. If we know it is going to be a hard seat, we take it. At home he can get by if he is at home. Even if he is on a soft seat, he can sit so long and then he has to get up. At home he sits on a chair and walks as he pleases, but if he is going to church or any place, any place there is a hard seat, we take that pillow. It is always in the car.

(Testimony of Mrs. Gertrude Marshall Williams.)

Q. These conditions and changes that you have testified to, do those exist today? A. Yes.

Q. Did they exist after January 30, 1952 when he had the injury? Did they begin when he came home from the hospital?

A. Yes. The reason I am slow on that, we knew he was sick when he came home from the hospital, so these things we couldn't do, such as going. I don't even go to church that much. When he went, he found out he couldn't sit. That has been going on and hasn't stopped.

Q. At all? [76] A. At all.

Mr. Gerhardt: That is all.

Cross Examination

By Mr. Taylor: Q. Just one or two questions, Mrs. Williams. Has Mr. Williams been to any doctors besides Dr. Yoell?

A. He goes to Dr. Williams. That is our personal doctor. Dr. Williams, Dr. P. A. Williams.

Q. You say he has been going to Dr. Williams?

A. He goes all the time, if he has a cold and things like that. As far as the injury, that I can't say. He knows about it, Dr. Williams knows about it. But if he has done anything on him, that I couldn't say.

Q. But he has been going to Dr. Yoell because of the injury, is that right?

A. The injury mainly is Dr. Yoell.

Q. He has been working as a longshoreman since the accident, has he not? A. Yes, he has.

Testimony of Mrs. Gertrude Marshall Williams.)

Q. Do you remember when he started after the ccident? Back to work?

A. It was April or May, because he took off in une. He asked Dr. Yoell for a special certificate r something to let him do light work and see if he ould do it. He said he would try, and he did. He ook off in June. That much I know. [77]

Q. That is the month you went back to Texas?

A. Yes, I asked Dr. Yoell if I could take him omewhere because he wanted to go to work, so I ook him.

Q. You heard him testify this morning?

A. Yes, I heard him.

Q. He has been doing the work he says he has een doing? A. I guess so. I don't know.

Q. He is working on the docks?

A. I know he works cars.

Q. And he also has worked ships?

A. I imagine so. I didn't know that.

Mr. Taylor: I have no further questions.

EDWARD B. RANDOLPH

vas called as a witness and being first duly sworn, estified as follows:

The Court: What is your full name?

A. Edward B. Randolph.

Q. Where do you live?

A. I live at 2918-C Stanton Street, Berkeley.

Q. Your business or occupation?

A. Longshoreman.

Q. How long have you been so engaged?

(Testimony of Edward B. Randolph.)

A. Thirteen years.

Q. At this port all the time?

A. Yes, sir. [78]

The Court: Take the witness.

Direct Examination

By Mr. Gerhardt: Q. Mr. Randolph, what is your position today as a longshoreman?

A. I am a hold man.

Q. You are a hold man? A. Yes.

Q. Were you aboard the President Polk on January 30, 1952, as part of a gang?

A. Pardon?

Q. Were you on board the President Polk at the time Mr. Williams suffered his injury?

A. Yes, I was.

Q. Do you remember the date?

A. I know it was in the latter part of the month, but I don't remember the exact date.

Q. What was your position at that time?

A. My position at that time was hold man and gang steward to gang 116.

Q. Who sent you aboard the President Polk? Marine Terminals Corporation?

A. Yes, they did.

Q. They also gave you your pay check, did they, Marine Terminals Corporation, or did you get that elsewhere?

A. It didn't come from the Marine Terminals Corporation. It came from the whole association.

Testimony of Edward B. Randolph.)

Q. But this gang was Gang 116, which was sent board by Marine Terminals, is that correct?

A. That is right.

Q. On the date that you went aboard the President Polk, what were your duties as gang steward?

A. Well, my duties as gang steward is to be certain the gang works in safe conditions on the ship.

Q. What did you do to comply with the duty on this particular occasion?

A. Well, we went about the work. Do you want to start from the first day?

Q. Yes. Start from the day you went aboard. Was that the day before the accident?

A. Yes.

Q. That was the day before. Do you remember about what time you went aboard on that day?

A. Well, it was a little after eight o'clock. We started off the dock at 8:00 o'clock to board the ship. Naturally it takes a few minutes to board the ship. I would say five or six minutes after 8:00, something like that.

Q. On the day before the accident?

A. That was the day before the accident, that is right.

Q. Did you work all day that day?

A. So far as I remember, I worked nine hours.

Q. You are not certain about how long you worked? [80]

A. I am not definitely set on the time when we started. That part I am not certain about.

(Testimony of Edward B. Randolph.)

Q. On the next day, the day of the accident, what time did you go aboard?

A. The same time.

Q. Eight o'clock in the morning?

A. That is right.

Q. Where did you go to work on that morning of January 30th, the day of the accident?

A. I can't understand that.

Q. Where did you go to work? What part of the ship?

A. The day we went aboard ship, we went to Number one hatch forward.

Q. Did you remove any strong backs or hatch ports that day?

A. The day before the accident or the day of the accident?

Q. Let us start with the day before.

A. The first time we went aboard the ship, we started making up gear, rigging the boom, and getting ready to work the hatch.

Q. What did you do that first day so far as removing hatch ports and strong backs?

A. The first day I think we had opened the—I am not sure whether it was pontoons on deck or whether it was hatches. I am not positive what it was.

Q. Did you open up the deck hatch?

A. After we rigged it up, we opened up the deck hatch. [81]

Q. Completely? A. No.

Q. How far?

Testimony of Edward B. Randolph.)

A. We opened the forward end.

Q. Then where did you go? Into the shelter deck r upper 'tween deck?

A. We went into the, well, the upper 'tween eck, I think it was.

Q. We have a diagram here that I might exlain to you.

The Court: Go down there and familiarize yourelf with the diagram.

Mr. Gerhardt: Will you come down here, please? Ve have a vertical section showing the shelter deck, he first level down or upper 'tween, as you someimes call it—is that correct? A. Yes.

Q. And then the upper 'tween deck and then the ower hold? A. Yes.

Q. Plaintiff's Exhibit Number two is a birdsye view looking down into the hold showing the orward end of the Number two 'tween deck openg, but the next two sections having hatch ports nd the beams in place.

A. That is right.

Q. The next one, Plaintiff's Exhibit 3, is a diaram showing the strong back in place and the type f bridle that was being [82] used at that time, is at right? A. Yes.

Q. Will you resume the stand, please?

Q. On the first day, Mr. Randolph, did you go own and open any part of the upper 'tween deck atch?

A. No, the first day we started on the first deck;

(Testimony of Edward B. Randolph.)

we started on the first deck, upper 'tween deck. We started working that deck first.

Q. Did you get down below the upper 'tween deck at any time on the first day, so far as you recall?

A. Yes, I believe we did. I think we went down and started into the next deck. I am not positive. Yes, I think we did. I think we started the next deck.

Q. When you say you started the next deck, you mean the lower 'tween deck? A. Yes.

Q. What did you do on that deck?

A. On that deck I think we started to take out some cargo, I'm not positive. I believe we were discharging cargo from that deck, I am not positive. It has been so long now.

Q. When was the forward section of hatch ports removed from the lower 'tween deck?

A. Into the lower hold?

Q. So you could load or discharge into the lower hold?

A. They were removed the second day. [83]

Q. The second day. Before the accident, anyway?

A. I think we had taken off the hatches the second day. I think we had taken off the hatches the day before the accident—I don't mean the day before the accident—the second day, the day of the accident. I believe that morning we had taken the hatches off. I am not positive. I can't be positive of that.

(Testimony of Edward B. Randolph.)

Q. In any event, the first section of hatch ports on the lower 'tween deck and the first strong back was removed? A. That is right.

Q. In the forward section of the——

A. There was one strong back removed. We had taken one strong back off. That is what they call the blind.

Q. Blind strong back?

A. It is a blind to support the hatches.

Q. Is that sometimes called a queen beam?

A. No, the king beam is the beam that holds the other hatches in place.

Q. You left in the king beam?

A. The king beam was left in, that is right.

Q. That would be the Number two beam, or strong back?

A. Number 2, that is right.

Q. You left in Number 2 and all the beams and hatch ports aft of Number 2?

A. That is right. [84]

Q. Did you make any inspection of the locking devices on the strong backs? A. Yes, I did.

Q. Did you make such inspection on the morning of January 30th, the day of the accident?

A. Yes, I did.

Q. Please tell me what you did, Mr. Randolph.

A. Before I went down into the hold I checked to see if those beams were secured.

Q. What did you find?

A. I found there were no locks. One lock was completely off. The other lock was off because you

(Testimony of Edward B. Randolph.)

couldn't feel it underneath. But I am almost positive both locks were off. There was no locks on that beam at all.

Q. On which beam? A. On the king.

Q. The Number 2 strong back?

A. That is right.

Q. The one that was still remaining in place?

A. That is right.

Q. On the lower 'tween deck level?

A. That is right.

Q. Now, you remember that one was missing. You are clear about that?

A. I am positive about one being completely gone. [85]

Q. And the other one you are not sure about?

A. The other one I know was not locked on one side. The bolt was in there, but there was no pin. What I mean, there was no lock to lock the beam.

Q. Do you remember which side that was of the beam?

A. That was on the starboard side. The port side lock was completely off. The starboard side was—just at the bolt. I couldn't feel the lock but——

Q. Was there a pin or bolt through on the port side? A. Just the bolt.

Q. Just the bolt? A. So far as I know.

Q. What you are talking about is the lug or little arm?

A. That wasn't there. That was missing.

Q. That was missing? A. That was gone.

(Testimony of Edward B. Randolph.)

Q. On the port side?

A. The port side was completely off. On the starboard side was just the bolt.

Q. What did you do when you found that condition?

A. Well, I called up and told the boss, the gaffer, that the beam wouldn't lock.

Q. Who was the boss, or gaffer?

A. That is the gang boss. He is in charge of the gang.

Q. Who was that in your gang?

A. Reuben Swanson. [86]

Q. Did he reply to you?

A. I don't recall whether he did or not. I am not certain.

Q. Did you have any discussion with him about removing the beam?

A. Well, I didn't—. The only thing I said was we should remove the beam. That is all I said. I don't remember having a great discussion about it at all, as far as going up on top deck and talking with him about it.

Q. Why did you want to remove the beam?

A. Because the beam was unsafe.

Mr. Taylor: Your Honor, I think that is argumentative as to why he wanted to remove the beam. This is his witness.

Mr. Gerhardt: I want to find out why he wanted to remove the beam. That is not argumentative. That is asking him a question.

(Testimony of Edward B. Randolph.)

The Court: The objection will be overruled. You may answer.

Q. Why did you want to remove the beam?

A. The beam was unsafe.

Mr. Gerhardt: Q. Unsafe for what?

A. Unsafe for the condition of the men working underneath it.

Q. Was that beam removed?

A. No, it was not.

Q. Can you remove it?

A. I don't have any authority to remove it. All I can do is [87] tell the gaffer about it.

Q. Who has authority to remove it?

A. The walking boss.

Q. Who was that?

A. I don't know him by name, but Ernie. That is the only thing I know him by.

Q. Who?

A. Ernie. I don't know him by his full name.

Q. He was not part of your gang?

A. No, he was not. He was the walking boss.

Q. Was he from Marine Terminals?

A. Yes, he was.

Q. And he has the authority to tell you to move the beam, is that correct? A. That is right.

Mr. Taylor: To which we object as being the conclusion of the witness as to whether or not he knows.

The Witness: Pardon? You'll have to make it louder.

(Testimony of Edward B. Randolph.)

Mr. Taylor: I am objecting, your Honor, it calls for the conclusion of the witness.

(Question read.)

The Witness: Ernie had authority.

Mr. Taylor: Just a minute, Mr. Witness. Until there is a ruling made——

The Court: You will have an opportunity to cross examine [88] him. I will allow it. The objection will be overruled. If he knows, he may answer.

Mr. Gerhardt: Q. Did you have any discussions either with the gaffer or the gang boss, or with your walking boss, with respect to safety conditions in that Number 1 hold? A. Yes, I did.

Q. What did you—what discussion did you have?

A. That was from the first day on. It is unsafe to work, and we were not going in unsafe conditions when we were working that ship.

Q. You had that discussion with both Ernie, the walking boss, and your gang boss?

A. That is right.

Q. Are both of those men over you, that is, superior to you? A. That is right.

Q. Was any work done with respect to moving cargo so far as safety conditions were concerned?

A. Yes.

Q. What was that?

A. We were removing drums from the coaming.

Q. What deck?

A. Just before we were down in the lower hold. That was in the lower 'tween deck.

(Testimony of Edward B. Randolph.)

Q. What was the reason you were moving that cargo?

A. That cargo was removed because it was unsafe, when we were [89] taking the hatches off going into the lower hold.

Q. Who permitted that to be done?

A. Well, Ernie permitted it to be done.

Q. How long did that take?

A. Oh, I am not positive, I think it had taken the rest of the day before. We went in the lower hold the next day.

Q. Was that done before the accident, this removal of the drums away from the side of the hatch, the lower 'tween deck?

A. No, I think it was the day before we went down into the lower hold. I think we had started to open up, if I recall—if I am not mistaken—those runs, those drums run—. I really told Ernie, myself, Ray Irvine and Smitty—the three of us had told Ernie to—well, we told the gaffer and then Ernie—that it was unsafe to work down in the lower hold, that those drums were no more than a foot from the lower hold, but they were about three tiers high.

The Court: Q. Was that the day of the accident?

A. That was the day before the accident.

Mr. Gerhardt: Q. When did you have the discussion with your gang boss and your walking boss with reference to the removal of the Number 2 strong back in the lower 'tween deck at Number 1?

(Testimony of Edward B. Randolph.)

A. That was the day of the accident.

Q. How long before the accident?

A. It was that morning, just after we had taken the hatches [90] off. I recall now. After we had removed the hatches and taken the beam out, then I inspected the strong backs to see that they were locked before we went down into the lower hold.

Q. That is when you found the Number 2 strong back was not locked? A. That is right.

Q. And that the latch was missing?

A. That is right.

Q. Mr. Randolph, I refer you to Plaintiff's Exhibit 6, which is a photograph of a strong back with a locking device at one end. In exhibit 6, that is in the unlocked or open position, is that right?

A. Yes.

Q. In Exhibit 7 it is in a locked position?

A. That is right.

Q. Does that latch have anything to do with the way the strong back fits into the slot on the side of the hatch? The slot I am referring to is shown on Plaintiff's Exhibit 9.

A. Yes. When that beam is lowered down, then this lock is turned over and fits into it; that is, provided there is play, if there was play on the latch—if there was any play in the strong back, the strong back has to sit just right for those locks to lock. Otherwise they won't lock.

The Court: Just a minute. The reporter must get everything down. If you will talk a little more slowly and clearly [91] it will be helpful to him.

(Testimony of Edward B. Randolph.)

Mr. Gerhardt: Q. Does that lock serve the purpose of preventing the beam from being raised back up or from being lowered further into the slot?

A. That prevents the beam from coming out.

Q. Is the beam held in place with the slot itself? A. No, the slot was not in place.

Q. Assuming it was lowered in place——

A. Not if this is locked. If it is lowered into the slot, and this lock is not on, that beam wouldn't stay in place. What I mean, this lock here would hold it when it comes down into the lock.

Q. What you are referring to is Plaintiff's Exhibit 6, which shows a strong back in place with the latch open or unlocked, is that right?

A. That is right.

Q. That strong back is remaining in place across the hatch? A. That is right.

Q. It is remaining there because it is held in place by the slot? A. That is right.

Q. Is that right? A. That is right.

Q. When the latch or safety device is placed in the closed position, as it is in Exhibit 7, that prevents the strong back [92] from being raised back up out of the slot, is that correct?

Mr. Taylor: That is a leading question.

Mr. Gerhardt: I beg your pardon, your Honor; I am sorry. That is a leading question. I will ask the question directly of the witness.

The Court: It may go out. The objection is sustained.

Mr. Gerhardt: Q. When the latch is in a locked

(Testimony of Edward B. Randolph.)

position, what is the action with respect to whether the strong back can or can not be lifted back up out of the slot?

A. When the strong back is locked into position, into two slots, then it is secured. The beam can't be pulled out, unless it is busted and the locks are broke, forced open.

Q. In this particular case you found at least at one end of the strong back the latch or safety device was missing? A. That is right.

Q. Mr. Randolph, I show you Plaintiff's Exhibit 10, which is a photograph that was taken a couple of hours or a few hours after the accident occurred on January 30, 1952, and I will ask you if you can state to the Court where, in what hold, these drums that you see in the photograph with white tops are located.

A. That is in the after part of Number 1 hatch.

Q. Are you sure? Are you sure that is the after part?

A. That is the after part, because this is the row of drums and this is cargo up here.

Q. I call your attention to the fact that this is the lower [93] hold, is that right?

A. That is right.

Q. And this is the lower 'tween deck.

A. That is right.

Mr. Gerhardt: Let us mark these. With the Court's permission and Counsel's, I will mark R-1, Plaintiff's Exhibit 10 for the lower hold where the drums are located.

(Testimony of Edward B. Randolph.)

Mr. Taylor: He said the after portion of the lower hold.

Mr. Gerhardt: That is what he said, counsel. We will straighten that out in a minute, I hope. I think you will stipulate, Counsel, that is the forward end of the hold. At least, you agreed this morning it was.

Mr. Taylor: That was my understanding from what I was told.

Mr. Gerhardt: Let us clarify it through the witness.

Q. R-2 represents the 'tween deck space, lower 'tween deck space? A. That is right.

Q. Now, R-3 of the upper 'tween deck or shelter deck space? A. That is right.

Q. What portion of the hold did the accident occur? A. It happened in the after part.

Q. Are you positive of that, Mr. Randolph?

A. I'm almost positive of it, because the ship was facing—on the dock it would be facing this way (indicating). [94]

The Court: Develop whatever the fact may be on the chart.

Mr. Gerhardt: Q. Mr. Randolph, I have shown you Plaintiff's Exhibit Number 2. You have told me that Number 1 strong back was removed. With the bow at this end, that would be the forward or after part?

A. That is the forward end of the ship.

Q. The forward end of the ship?

A. That is right.

(Testimony of Edward B. Randolph.)

Q. Mr. Randolph, was there any cargo on the hatch proper in Number 1 lower 'tween deck?

A. Yes.

Q. Or was it in the wings?

A. The cargo was in the forward end. There was no cargo in the forward end of the lower hold. The cargo was in the after end.

Q. Of the lower hold? A. That is right.

Q. I am referring to Plaintiff's Exhibit 18, the Pacific Coast Marine Safety Code. Are you familiar with that code?

A. They never did issue—I never did receive a book like that. I have my own book at home, that safety code.

Q. That safety code? A. Yes.

Q. Issued to you by whom?

A. Issued to us by the longshoremen.

Q. By the union? [95]

A. Pardon?

Q. By your union? A. Yes, correct.

Q. When you stated that you made the request, Mr. Randolph, to remove this strong back, would that have involved removing the beams, too?

A. That would have involved moving that whole section out.

Q. This whole second section?

A. That is right.

Q. Referring to Plaintiff's Exhibit Number 2, about how long a period of time would that have taken? A. To remove that section?

Q. Yes.

(Testimony of Edward B. Randolph.)

A. Oh, a matter of ten or fifteen minutes to take it out.

Q. You mean both the hatch boards and the strong back?

A. And the strong backs, yes.

Q. Where were you at the time the accident occurred?

A. I had gone into the lower hold, but there were four men in the lower hold who were going to work at that time. So I was going up on deck, and just as I got up on deck, that is when the accident occurred.

Q. What did you see?

A. When I looked down in the lower hold I actually saw just a whole lot of dust and dirt, and I headed right down into the dust and dirt, because I knew somebody was hurt. I heard a [96] lot of hollering, "Somebody is hurt, somebody is hurt".

Q. What did you find when you got there?

A. When I got in the lower hold I found Williams laying across the beam.

Q. Across which beam?

A. The beam that struck, the king beam.

Q. The number 2 strong back from the lower 'tween deck? A. That is right.

Q. That was in the lower hold?

A. Yes.

Q. Williams was where?

A. He was lying across the beam.

Q. What was Williams' condition?

(Testimony of Edward B. Randolph.)

A. He was pretty well—well, he was bleeding, for one thing, because we wiped the blood off.

Q. Where? A. Around his head.

Q. The forehead? A. Mouth.

Q. Mouth and forehead both?

A. Yes, because I wiped the blood off, myself.

Q. Then what happened?

A. Then I hollered up that a man was hurt and get the safety stretcher down so we could send him out. He was badly hurt. I started to talk to him, and I asked him how badly was he hurt, [97] and he said he couldn't move. So I said, "Where does it pain you?" And that is when I felt the big lump right around his back, swollen. It was as big around as a ball, in his back.

Q. A ball?

A. I would say, from what I could feel. Naturally, I didn't pull his clothes off. He was paining too bad even to move him.

Q. How was he moved from the hold?

A. How was he moved from the hold? On a board and net. The ambulance crew—they sent a crew down. Then we put him in this net and put him on a board and sent him out.

Q. Mr. Randolph, you are appearing here today under subpoena? A. Yes.

Q. Did you receive one or two subpoenas?

A. Two.

Q. One from each party? A. Yes.

Mr. Gerhardt: That is all.

(Testimony of Edward B. Randolph.)

Cross Examination

By Mr. Taylor: Q. Mr. Randalph, you have testified that you worked the President Polk the day before the accident? A. Yes.

Q. Was Mr. Williams a member of the gang the day before the accident? A. Yes. [98]

Q. And you say that you boarded the Polk at 8:00 o'clock the day before the accident?

A. We were starting to board. At that time it wasn't exactly 8:00 o'clock. It is always a few minutes after when we start. They give us orders to work beginning at 8:00, but naturally it takes a few minutes to get aboard the ship.

Q. But it was in that vicinity, are you sure of that?

A. I couldn't say exactly what time it was.

Mr. Gerhardt: Your Honor, I have the ship's log.

Mr. Taylor: That is why I am testing his memory.

The Witness: I don't have no watch to keep the correct time.

Mr. Taylor: That is exactly why. I am testing his memory.

Q. Would you say you went aboard before 9:00 o'clock? A. Oh, yes.

Q. That was the day before the accident?

A. That is right.

Q. Before 9:00? A. Before 9:00.

Q. And you worked the ship all day the day of the 29th? That is the day before the accident.

Testimony of Edward B. Randolph.)

A. Yes.

Q. And the next morning you went aboard in ne morning, that is, the day that Mr. Williams as hurt? [99] A. Yes.

Q. I believe you testified that you made no nspection of the strong back the first day you ere aboard the ship?

A. We were not at that level to inspect the trong back.

Q. So the inspection you made——

A. Was the day of the accident.

Q. The day of the accident?

A. That is right.

Q. Do you recall about when the accident hapened?

A. The accident happened between 9:00 o'clock n the morning——

Q. Could you come any closer than that? Was closer to 9:00 or closer to 10:00?

A. I couldn't say closer, because I have no atch to tell what time it was.

Q. The first place you had gone aboard the hip on the morning of the accident was to the ower 'tween deck, is that right?

A. The day before the accident?

Q. No, the day of the accident.

A. The day of the accident?

Q. Yes.

A. That is when we started to go to work in the ower hold. We started to uncover in the lower ween deck.

(Testimony of Edward B. Randolph.)

Q. Was that the first thing that you did, then, on the morning of the accident, was to go down into the lower hold? A. To start work. [100]

Q. Yes.

A. I am not positive, but I believe we removed the beam, the hatches. I am not certain. But I am almost sure before I went down I did inspect the king beam on that particular deck.

Q. At what time of the morning did you inspect the king beam that we have been talking about on the lower 'tween deck?

A. That was before we went to work in the lower hold.

Q. What time of the morning was it?

A. The time of the morning I couldn't exactly say because I have no watch to tell what time it was.

Q. Was it the first thing you did that morning when you went to work, or was it later on, Mr. Randolph?

A. You mean later on that I checked the beam?

Q. Yes. I'm now talking about checking the beam. I want you to tell me what time it was.

A. I don't know what time it was. I have no watch to tell exactly what time it was.

Q. With reference to the time the accident happened, how long was it before the accident that you made this inspection? Was it five minutes, ten minutes, a half hour or an hour?

A. It was before——. Now, let's see. As far as the time was concerned, I couldn't say that because

(Testimony of Edward B. Randolph.)

I don't know. It was before 9:00 or 10:00, 9:00 or 10:00 o'clock, I know that.

Q. You know it was before the accident. You have said that. [101]

A. That is right.

Q. My question is, how long before the accident was it? A. I couldn't say the exact time.

Q. We are not expecting the exact time, but could you give us an approximation? Was it five minutes, ten minutes, or more?

A. I can't say that because I wouldn't want to put myself in a position to say something like this, that it was that time or five or ten minutes before that time I can't say because I don't know. It is pretty hard for me to judge time back there in 1952, and this is 1955.

Q. You were not in the lower hold at the time of the accident?

A. When the accident happened?

Q. When the accident happened.

A. No, I went down into the lower hold but I came back out.

Q. Had you done any unloading, then, in the lower hold before the accident?

A. We did not discharge, so far as I know, any cargo in the lower hold. We were loading.

Q. That is what I say. You were loading in the lower hold? A. That is right.

Q. Did you yourself have anything to do with the loading in the lower hold?

A. Yes. I started tilting up drums in the lower

(Testimony of Edward B. Randolph.)

hold. We were working half hour on, half hour off. There are four men [102] working, two men taking off for coffee or smoke. I had started myself, me and my partner.

Q. Who was your partner?

A. I don't recall his name. He is a man out in the hall. I don't know what his name was.

Q. Did Mr. Williams and his partner start at the same time you did?

A. No, not at the same time we started. They came on what they called the next half hour. That was prior to the accident.

Q. This matter of moving the drums on the lower 'tween deck, you have testified about that.

A. That is right.

Q. When did you do that?

A. That was the first day.

Q. You did that the first day?

A. Yes, we did, because it had taken us—oh, it must have taken us from two and a half to three hours, something like that. I have forgotten now.

Q. Where were those drums located?

A. They were located in the upper 'tween deck.

Q. In the upper 'tween deck?

A. I will get that straight. Let me see. The lower 'tween deck. It was in the second deck, right in the 'tween deck. That would be the lower 'tween deck, and then the lower hold.

Q. Those drums that you are complaining of, had you loaded [103] those drums? A. No.

Q. Or had they been loaded in another port?

(Testimony of Edward B. Randolph.)

A. They had been loaded in another port.

Q. Had you been discharging at the 'tween deck level on the 29th?

A. We had been discharging both decks, the upper deck and the lower deck. The first day the upper deck and then we opened during that afternoon and came down on the other deck.

Q. So we can get it straight, the lower 'tween deck is the deck where the drums were that you were complaining of; that is right, isn't it?

A . Yes.

Q. Had you discharged cargo from the lower 'tween deck on the 29th?

A. I can't recall whether we had discharged cargo off that deck or not. It is hard to say.

Q. Was there any cargo on the hatch covers on he 'tween deck on the 29th?

A. I don't recall there being any cargo on the hatch covers at all on either deck.

Q. We are just concerned about the 'tween deck.

A. So far as I can remember, no. All the cargo was in the wings, in the forward end of the ship.

Q. Did you do any work in the lower hold on he 29th? [104]

A. The first day? No, we didn't, not to my nowledge. I don't remember going in the lower old the first day at all. I don't remember.

Q. Did you inspect more than one beam or rong back at the lower 'tween deck level on the orning of the 30th?

(Testimony of Edward B. Randolph.)

A. No, that was the only beam that had to be inspected.

Q. That was the only one you did inspect that morning, is that right?

A. That's right, the only one that had to be inspected.

Q. And I believe you testified that on the port end of the beam, if my notes are correct, there was no lock at all?

A. No, there was no lock.

Q. Is that a fair statement?

A. That is right.

Q. There wasn't even a bolt through?

A. No, there was not.

Q. That is on the port end?

A. That is on the port side, the side closest to the dock.

Q. On the starboard end of the strong back you found just a bolt? A. Just a bolt, no lock.

Q. It didn't have that little locking device?

A. No.

Q. That was on the starboard end?

A. That is on the starboard side offshore. [105]

Q. Do these strongbacks have locks, these little flanges that move on both sides, or are they just on one?

A. Just one side. They usually have one on each side, like if the ship is in port, they have one on the opposite side, one on this side and one on this side. They don't have two on the same side.

Q. To get it a little clearer, you have the strong

Testimony of Edward B. Randolph.)

ıck in place. There will be a forward side and an ter side.

A. That is right. There is one aft and one for-ard.

Q. You are sure they are not both on the same de?

A. I know they are not. I haven't seen any on e same side yet, myself. Could be, but I have ever seen them.

Q. But you are sure that the ones you looked on the morning of the accident, there was one t, on the aft side of the strong back and one on e forward side of the strong back?

A. They were not on there.

Q. On which end? I did not mean to mislead ou. Had there been locks——

A. There had been locks, yes.

Q. One would have been aft and one would have een on the forward side?

A. That is right.

Q. I believe that you said that you told Mr. wanson that the beam would not lock?

A. That is right. [106]

Q. Where was Swanson at the time?

A. He was on deck.

Q. On the main deck? A. Yes.

Q. When were you at the time you told him at?

A. I was over where the beam was.

Q. Were you in the lower hold, or were you on e 'tween deck? A. The lower 'tween deck.

(Testimony of Edward B. Randolph.)

Q. You were in the lower 'tween deck?

A. That is right.

Q. I believe you said he did not reply to you?

A. Not that I recall. However, he might have said something. I don't remember.

Q. You don't remember hearing him say anything? A. No, I don't remember.

Q. You said something about there being play in the strong backs? A. Yes.

Q. Do you mean an end for end play?

A. That is right.

Q. You are not talking about sideways play?

A. A little play either way. None of them fit tight. If they fit tight, we could hardly pull them out with a winch. They have play on either side, this way, and then they have a [107] play of fore and aft.

Q. Assuming that there was no lock at all at one end but there was a locking device in the other end, could a strong back be removed——

A. That is right.

Q. Even though one end was locked?

A. That is right.

Q. It takes both ends——

A. You could pull one end right out, even with the lock at one end. The strong back would still come out.

Q. It takes a locking device at both ends——

A. To hold the strong back in place.

Q. And the little lugs have to be in the notches at both ends, is that correct? A. That is right.

Testimony of Edward B. Randolph.)

Q. As a longshoreman, have you ever put in a ck in a strong back?

A. What do you mean, have I ever put one on e strong back?

Q. Yes. A. No, never.

Q. I mean, assembled a lock on a strong back.

A. No.

Q. You have never done that? A. No.

Q. Would it be part of your duties to do that?

A. No, it would not.

Q. Just one final question. You are sure that the rrels you removed on the lower 'tween deck— ou are sure that was not done the morning of the cident, before the accident?

A. No, I'm not sure whether we had done it the orning before the accident or the first day we went work. I am not positive.

Q. It is entirely possible that it could have ken place the morning of the accident before the cident, isn't that true?

A. No, I don't think it could have, because it ould take us at least an hour or two hours to re- ove the cargo from around the hatch. Those drums ere at least a foot from the hatch, and that had be moved out of the way. There was quite a bit work there to be done.

Q. Well, wasn't that done the morning of the 0th?

A. I am not positive if it was done the morning the 30th. I don't think so. I don't think it was one then. I think it was done the day before that.

(Testimony of Edward B. Randolph.)

Mr. Taylor: No further questions, your Honor.

Mr. Gerhardt: No questions.

The Court: We will recess until 10:00 o'clock tomorrow morning. [109]

Thursday, June 9, 1955, 10:00 a.m.

JAMES RANDOLPH

was called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

The Clerk: Will you state your name to the Court, sir? A. James Randolph.

Direct Examination

By Mr. Gerhardt: Q. Mr. Randolph, where do you reside? A. Where do I reside?

Q. Yes. A. 86 Clara Street.

Q. San Francisco? A. Yes, sir.

Q. Are you any relation to the Edward Randolph who testified yesterday?

A. I am the father.

Q. What is your occupation?

A. Longshoreman.

Q. How long have you been in that business?

A. Oh, about 37 years.

Q. Do you recall being aboard the President Polk on January 30, 1952 when an accident occurred to Mr. Williams? A. Yes, sir.

Q. What was your position at that time? [110]

A. Well, I was working down in the hold with him at that time when the accident occurred.

Testimony of James Randolph.)

Q. What happened?

A. We was loading drums, and they had what hey called the safety bridle bringing the drums in n, four drums in on this safety bridle.

The Court: Sit down there while you are resting nd relax.

The Witness: Thank you.

What happened, when the winch driver takes his ridle out, something caught the strong back and ulled it out, when we was working one section.

Q. When you say you were working one section, vhat do you mean?

A. Sometimes you have three sections of the atch, sometimes four, and we was only working ne section. That is, one section of the hatch was aken off, the rest was on.

Q. Mr. Randolph, referring you to Plaintiff's Exhibit 2, this middle diagram on the black-oard——

The Court: Before you examine him on a dia-ram, familiarize him with the diagram.

Mr. Gerhardt: I intend to examine him only n this one diagram, your Honor.

The Court: Step down. (To the witness). Are ou familiar with that diagram he is talking about?

The Witness: If they are strong backs, I should e. [111]

Mr. Gerhardt: Q. Mr. Randolph, this view look-ng down into Number 1 hatch and a view of the ower 'tween deck. That shows the forward section f the hatch beams removed. Is that the condition

(Testimony of James Randolph.)

that existed at the time you were down in the Number 1 lower hold?

A. The forward section?

Q. The forward section.

A. We were working on the after section. We were working Number 1 hatch.

Q. You were working Number 1 hatch?

A. That is right.

Q. Irrespective of whether it was fore or aft, how many sections of strong backs had been removed? A. One.

Q. One?

A. To my knowledge, that is, on that deck.

Q. How many strong backs were still left in place, do you know?

A. I didn't really count them. Sometimes it is three, four or five.

Q. In this particular hatch, Mr. Randolph, this diagram which has been stipulated to shows the three sections of hatch boards and five strong backs. On the basis of that, was Number 2 strong back still in place on the lower 'tween deck?

A. Yes, it had to be. Worked three sections.

Q. Will you resume the stand now, please. Now, which strong [112] back was it that fell into the lower hold?

A. Well, the strong back on the after end that the hatches were on, were resting on, on the forward end.

Q. With respect to the number of the strong back, which one was it? A. That is correct.

(Testimony of James Randolph.)

Q. Which one was it?

A. I would say it would be number 4.

Q. With respect to the end of the hatch that you were working on, how many strong backs from that end had been removed? A. Only one.

Q. Only one?

A. We had only taken one out.

Q. That would be your next section?

A. That is right.

Q. Did you see the beam fall?

A. I did not.

Q. Did you see it strike? A. I did not.

Q. When did you first see Mr. Williams after the accident?

A. After the strong back had fell, and I heard him hollering. It missed me by an inch, and I never even seen the strong back coming or heard anything. I was busy, you know, getting our work did. It happened that quick. I didn't see it happen. I don't know what happened. All I know, the strong back come [113] down. I heard Mr. Williams holler and his partner come, he was running. So that was that.

Q. Where was Mr. Williams in the hold at that time?

A. Well, he was working in the offshore wing.

Q. After he was injured, where was he?

A. He was laying across the strongback.

Q. Was he removed from the hold?

A. From the hold? Yes, after the doctors came down.

(Testimony of James Randolph.)

Q. Had you made any inspection of that strong back to see whether it was locked?

A. No, I did not. My son did. He was steward of the gang, and it is their duty to see that things are safe.

Q. Did you know prior to the accident that there was a latch missing from the strong back?

A. No, I didn't look myself. He taken care of it himself. He was steward of the gang and he made his report to the boss about it.

Q. He made the report to what boss?

A. The gang foreman, brother Swanson.

Q. Was the work stopped?

A. No, the work was not stopped until after the accident.

Q. After the accident, how long did the work stop for? A. What was that?

Q. How long was work stopped after the accident?

A. I would say it could be three-quarters of an hour or half [114] an hour. I couldn't estimate correctly.

Q. Are you familiar with the safety rules?

A. Well, yes, I am, quite a bit familiar with them.

Q. Are you familiar with the rule, Mr. Randolph, that provides that no cargo shall be worked through a section of the hatch unless the strong back of the adjacent section is bolted, locked or secured?

A. That is correct. That is the rules.

(Testimony of James Randolph.)

Q. Are you familiar with the one that provides hat the work may be stopped until that strong back s made secure or removed?

A. That is correct. That is what we are supposed to do.

Q. But that was not done? A. No.

Q. Mr. Randolph, I call your attention to Plainiff's Exhibit 10, which is a photograph taken a few ours after the accident on January 30, 1952.

A. Yes.

Q. Your son testified yesterday that R-1 marked he lower hold where they were working.

A. That is right.

Q. R-2 marked the lower 'tween deck and R-3 narked the upper 'tween deck, is that right?

A. Yes.

Q. I notice that there is a net stretched across he hatch [115] on the level of the R-2, which is he lower 'tween deck. What is that net?

A. That is supposed to be a safety net.

Q. Were men working on the lower 'tween deck n this other section?

A. They must have been. I don't remember. I lon't recall, but they must have been.

The Court: Raise your voice so they can hear ou.

The Witness: I don't remember that, but I know hat is supposed to be the safety net for the proection of the men working on the next deck.

Mr. Gerhardt: Q. I notice that there are no natch boards across here, across the beam opposite

(Testimony of James Randolph.)

the mark R-2. Was that where the second section had been removed? A. What is that?

Q. The second section of hatch board. That was the section that the strong back was resting on. Had those been removed after the accident?

A. After the accident.

Q. After the accident the second section was removed?

A. They had to be removed because if they wasn't, they would fall below to damage the cargo or anything else could happen.

Q. With the arrangement shown in this photograph, was cargo worked that afternoon after the accident? A. After the accident. [116]

Q. Yes. A. Oh yes, sure.

Q. Did you participate in any work of re-setting the drums prior to the accident?

A. That is correct.

Q. When was that?

A. Well, to my knowledge they did it after the accident.

Q. I beg your pardon?

A. To my knowledge it was did after the accident.

Q. Where were the drums restowed?

A. In the lower 'tween deck.

Q. Where had they been before being restowed?

A. They was up at the lower 'tween deck. They were stowed in the wings.

Q. They were stowed in the wings?

Testimony of James Randolph.)

A. That is correct. The square of the hatch was pen.

Q. For what reason were they restowed?

A. Because there was danger. There was a hatch vith men working down there. If the ship took the east list, the drums are liable to fall right down n top of your head.

Q. Who issued orders for that?

A. My son told the walking boss and he told the oreman, and they got together on it.

Q. Who was the walking boss?

A. Ernie. [117]

Mr. Gerhardt: That is all.

Cross Examination

By Mr. Taylor: Q. Mr. Randolph, you say that ou were down in the lower hold when Mr. Williams was injured? A. That is right.

Q. Who else was down there that morning?

A. Henry Lewis, my partner, and a fellow who vas working with him by the name of Smitty.

Q. Who was your partner?

A. Henry Lewis.

Q. Your son was not down in the hold when the ccident happened?

A. No, there was only four of us because it is nly a small space, and that is the way we work vhen you get a small place like that, just four men.

Q. Had your son been down in the hold before he accident?

(Testimony of James Randolph.)

A. That is right, prior to the accident he had been down there.

Q. How long prior to the accident had your son been down in the hold?

A. I would say maybe ten minutes, maybe fifteen, something like that.

Q. How long had you been in the lower hold before the accident, Mr. Randolph?

A. Before the accident?

Q. Yes. [118]

A. Well, in general, I generally go down in the hold when I start to work and I stay down there. Lots of them go on deck, and they don't have to be down there, but generally I stay down there. When we opened up the hatch down there and started to work, I stayed down there all the time, even when the other four was working, the periods of time that they started. I still stayed down below.

Q. About how long were you in the lower hold before the accident, in minutes?

A. Well, I couldn't give no definite time.

Q. What time was the accident, Mr. Randolph?

A. I don't even know that correct.

Q. Was it in the morning or the afternoon?

A. In the morning.

Q. Was it shortly after you began work in the morning, or had you been working awhile?

A. Oh yes, I had been working awhile.

Q. You had been working awhile? A. Yes.

Q. How long had you been working in the lower hold before the accident?

Testimony of James Randolph.)

A. Well, I would say a half hour, maybe an our, maybe an hour and a half.

Q. Which one of those figures was it?

A. Well, I couldn't say definitely. [119]

Q. You told Mr. Gerhardt that some drums ad been restowed on the lower 'tween deck?

A. Yes.

Q. When was that done, before or after the ac-ident?

A. To my knowledge, it was after.

Q. It was done after the accident?

A. To my knowledge, according to my under-tanding.

Q. Did you yourself inspect the strong back?

A. I did not.

Q. That is what the gang steward is supposed o do.

Q. You yourself made no inspection?

A. No, sir.

Q. When this accident happened I believe you aid that you did not see the strong back fall?

A. Correct. I did not.

Q. You do not know what caused it to fall, do ou?

A. No. I couldn't say, because I didn't see it.

Mr. Taylor: Your Honor, we will ask that his ormer testimony to the effect that something aught the strong back be stricken as being a mere onclusion of the witness and not based upon any nowledge.

(Testimony of James Randolph.)

Mr. Gerhardt: I might clarify one matter if I might ask a question at this point.

Q. Did you see a sling or bridle going up?

A. I seen it when we landed the drums, we unhooked the bridle. [120] We turned our back to the bridle to roll the drums out to where we stow them, and the winch driver takes the bridle up. The strong back came down and missed me about an inch or two inches, and my partner about the same.

Mr. Taylor: We will renew our objection.

The Court: I will allow it to stand.

Mr. Taylor: Q. Did you say that when you released the bridle you turned your back to the bridle?

A. Sure. We turned our back to the bridle and rolled the drums out to stow them.

Q. You do not know of your own knowledge whether the bridle was moved before the strong back fell, do you? Of your own knowledge?

A. The bridle was moved before the strong back fell?

The Court: Do you understand that question?

The Witness: No, you've got me kind of——

Mr. Taylor: I will reframe it.

Q. After you unhooked the bridle, do I understand that you turned your back to the bridle and started rolling the drums away?

A. That is right.

Q. And you do not know what happened to the bridle? A. I do not.

(Testimony of James Randolph.)

Q. Of your own knowledge? A. No. [121]

Q. The next thing you knew was that a strong back almost hit you?

A. That is right, and a man was in the wing hollering.

Q. Did you hear anything before the strong back, as you say, almost hit you?

A. No, it hit so quick, just like that.

Q. Your answer is you did not hear anything?

A. No.

Q. I believe that you said you saw Mr. Williams lying across the strong back?

A. Yes, part of him was across the strong back, part of him was underneath. It was on his legs.

Q. On his legs?

A. That is, his legs were underneath. I don't know whether the strong back was on top of his legs. Part of him was underneath and part was laying across the strong back when I seen him.

Q. Was he on the deck floor, that is, the lower deck floor?

A. Yes, right in the wing of the ship.

Q. Mr. Randolph, do you know whether or not any of the hatch boards fell when the strong back came down?

A. No, I don't remember any of them coming down at all. I think they was—all stayed up there, but they had three strong backs the hatch was resting on. When this was taken out they still had two strong backs there for it to rest. The [122] middle strong back held them up.

(Testimony of James Randolph.)

Q. There was only one section of the lower hold that was open, is that right?

A. That is right. We was working on what they call one section.

Q. Loads were coming down through that one section? A. That is right.

Q. Was that the fore section or the aft section of Number 1 hatch?

A. To my knowledge it was the after section.

Q. It was the after section?

A. That is right.

Q. Counting the strong back that was removed, strong back Number 1—do you understand—which number strong back was it that came down?

A. Well, if it was three section—I don't remember how many sections in the hatch—if it was three sections I would say it was Number 4.

Q. Let me ask you this: Was it the strong back next to the one that was missing, or was it one of the other strong backs?

A. Yes, it was the one next to the one that was missing. The one taken out was what we considered the blind.

Q. It was the king next to the blind?

A. That is right.

Q. Did you examine the strong back after the accident? [123]

A. No, I didn't. My son did.

Q. You did not look at the strong back after the accident? A. I did not.

Testimony of James Randolph.)

Q. As I understand, you did not look at the rong back before the accident.

A. That is correct.

Q. Is that right?

A. That is correct.

Q. With reference to these drums that were re-owed, Mr. Randolph, were any of those drums on ne hatch ports?

A. No, sir, they were all in the wing.

Q. They were all in the wings?

A. Yes, sir. As I recall, they were about three r four high—I disremember—in the wing.

Q. Do you know who stowed those drums?

A. I don't.

Q. Had your gang stowed them?

A. They were stowed in a different port.

Q. They were that way when the ship arrived?

A. That is correct.

Q. Had you worked the ship before—the day efore the accident?

A. Well, I may be in error there. Been so long, I really don't have it. I looked in my book. We tarted the ship at 1:00 o'clock, the day before. When I looked in my book I [124] found the time out down there.

Q. Did you work the day before?

A. That's correct.

Q. Did you work the lower hold the day be-fore?

A. No, we discharged in the shelter deck, I

(Testimony of James Randolph.)

think. I am not positive, but we did some discharging before we went down in the lower hold.

Q. Did you discharge the lower 'tween deck the day before?

A. I disremember. I think it was the upper 'tween deck.

Q. These drums that were restowed, were they lashed with ropes?

A. They were not.

Q. Is that what you did? You lashed them?

A. No, I think we removed some of them. The ones that were in danger, we removed.

Q. And replaced them?

A. That is right.

Q. And did you lash some of them down?

A. We did.

Q. But you believe that was done after the accident? A. To my knowledge.

Q. So that the drums were in what you have called a dangerous condition on the morning prior to the accident? A. That is right.

Mr. Taylor: That is all. [125]

Mr. Gerhardt: That is all.

The Court: Q. How long did you say you were engaged in longshoring?

A. About 37 years, a little better.

Q. Where did you start?

A. San Francisco.

Q. Here at this port? A. Yes, sir.

Q. How old are you? A. 61.

ROMEO PAQUETTE

vas called as a witness on behalf of the plaintiff, nd being first duly sworn, testified as follows:

The Clerk: Q. Will you please state your name o the Court?

A. My name is Romeo Paquette.

Direct Examination

By Mr. Gerhardt: Q. Mr. Paquette, do you reside in San Francisco?

A. Yes, sir, 167 Rome Street.

Q. What is your present occupation?

A. Longshoreman.

Q. How long have you been doing that work?

A. 33 years.

Q. Do you recall being aboard the President Polk on the day of the accident to Mr. Williams?

A. I do.

Q. What was your position at that time?

A. My position was winch driver.

Q. With what gang? A. 116.

Q. You were employed by whom?

A. I am employed by the Pacific Maritime Association.

Q. Your immediate employer, though, is whom? Marine Terminals Corporation?

A. At the present time or the time of the accident?

Q. At the time of the accident?

A. At the time of the accident, Marine Terminals.

Q. What were your duties as winch driver?

(Testimony of Romeo Paquette.)

A. My duties is to hoist the cargo in and hoist it out.

Q. Do you have any other duties?

A. No, that is the whole requirement.

Q. On that day, were you working with another man alternating as winch driver? A. Yes.

Q. Who was that?

A. Mr. Frank Kelberg.

Q. What was your routine in alternating or relieving each other?

A. If we started the shift at one o'clock, whoever goes on first stays one hour, and then the partner relieves one [127] hour. One hour we give the signals and one hour we hoist the cargo.

Q. Who was on first that morning?

A. I believe my partner was on first.

Q. He was on at the time of the accident?

A. I was on at the time of the accident.

Q. At the time of the accident you were at the winch controls? A. I was.

Q. Where were you located with respect to the hatch opening?

A. Up above the hatch on a kind of a platform they have built there.

Q. Mr. Paquette, I show you a recent photograph taken aboard the President Polk, Plaintiff's Exhibit 4, showing the winch driver's platform over the forward end of the hatch. Is that the place where you were located?

A. That is the place.

Q. Where were you loading or discharging?

(Testimony of Romeo Paquette.)

A. You mean the first day or the day of the accident?

Q. The day of the accident.

A. The day of the accident we were loading drums.

Q. And you were loading drums at the time of the accident into which hold?

A. Number 1 hold, the forward part.

Q. Number 1 lower hold, the forward part. How many beams had been removed from the lower 'tween deck? [128]

A. From the lower 'tween deck? Just one beam all the way down.

Q. That would mean one section of hatch boards, then? A. One section of hatch boards.

Q. And that left numbers 2, 3, 4 and 5 beams in place? A. Absolutely.

Q. And two sections of hatch boards in place?

A. The two sections I can't see from up above. When there is only one section off I can't see beyond that section. There may be four or five sections of hatch boards, but I can't see it.

Q. Could you see clear into the lower hold?

A. I could see clearly down to the bottom.

Q. Tell me what happened at the time of the accident.

A. Well, at the time of the accident, I took in four drums and the boys unhooked the sling, and I proceeded to come up with the hook. Sometimes these slings flop back and forth, and in the course of a day's time many times the steel heads—we will

(Testimony of Romeo Paquette.)

say, for instance, this is a strong back.

Q. You are referring to the rail in front of the jury box?

A. Yes. They flop back and forth. Nothing happens. There is a rubber around it. And this time, if the strong back had a lock on it, the little hook caught underneath the strong back.

Q. The little hook on what? [129]

A. The little hook on top of that rubber bridle.

Q. This is the bridle you were using. I call your attention, Mr. Paquette, to Plaintiff's Exhibit 3, which shows a bridle similar to the one you were using at the time, is that correct?

A. Yes, that is right.

Q. Was the bridle opposite Number 2 strong back?

A. What do you mean, opposite Number 2?

Q. Did you actually see it swing against Number 2 strong back?

A. It swings all the time. Every load it swings.

Q. Why does it swing?

A. Why? Because a lot of times the boys don't steady it. Sometimes the winches go a little faster, sometimes faster than others, and it gives a little swing, and when you are working in one section, a little swing one foot one way or the other, you don't have much space in there.

Q. Do you approve of having just one section open?

A. No, I never approve of one section. We have to stoop over to look to the botton, and it is to our

(Testimony of Romeo Paquette.)

advantage to have two, three or four sections open, if possible.

Q. Did you make a request for another section to be opened?

A. As far as making a request, I don't remember that I did, but I usually do every ship. If it isn't easy for us to load cargo, we like to have an extra section off.

Q. Who would you make that request of? [130]

A. Sometimes if the walking boss is there, he tells us when we come on the ship, "Take one or two sections off." That day whatever he said I don't remember.

Q. You follow your walking boss with respect to what sections you should remove when you first come there? A. Not all the time.

Q. But normally?

A. Normally. If the thing is safe and everything —sometimes we can't take two sections off. They have cargo on top of the hatches.

Q. If it is unsafe, what do you do?

A. If it is unsafe, the boys underneath is the ones that are working. Those strong backs aren't going to hit me on top there.

Q. You leave it up to the boys underneath to request it?

A. Yes. If they say remove it, we remove it.

Q. Referring back to the time of the accident, Mr. Paquette, what did you actually see as you were removing the bridle from the lower hold?

A. Well, I was hoisting the bridle up. I saw it

(Testimony of Romeo Paquette.)

catch the strong back, and I stopped immediately, but those winches are quite fast, and by the time I stopped it, there is a groove where the strong back fits in. Well, the strong back was out of that groove and the hook was still holding the strong back. But due to the shift—in the number one hatch, the ship is [131] this way (indicating).

Q. What do you mean? Do you mean up by the head?

A. Yes, and if that ship had been on an even keel, probably that strong back would have gone right back into the slot, but it got out of the slot and had a tendency to move fore or aft, because the ship is this way (indicating), and just as soon as it moved a little bit, it fell off of the hook and down into the hold.

Q. When the ship was in the position of the President Polk on this occasion and being down by the stern and up by the head, what angle does that give to your falls as you bring it up and down out of the lower hold?

A. The further we go down the hold, the more aft the hook goes. If we go down 60 feet—of course, I am not a mathematician, but a mathematician could tell you how far down that hook isn't straight up and down.

Q. In view of that condition, what is your preference as a winch driver with respect to how many sections of hatch boards shall be removed?

A. I would like to have them all removed.

Mr. Taylor: I am going to object to the form

Testimony of Romeo Paquette.)

f the question as to what this man's preference is.

Mr. Gerhardt: Q. What is your practice, Mr. 'aquette?

A. Our practice is to try to have enough room) come in and out with loads without any obstruc-ions. [132]

Q. Does one section normally give you that on ıe President Polk?

A. Not at all times.

Q. Did it on this occasion?

A. I am not saying about the President Polk. I m talking about all ships.

Q. In other words, that situation can exist on ll ships, is that true? A. Yes.

Q. What is your actual practice, then, generally, vith reference to the removal of more than one ection?

A. Generally, if nothing is said and we are able) take off two or three sections, the further we an have the boom down, the more we can see and he less obstruction for us to come up with a load vithout striking anything.

Q. Mr. Paquette, I refer you to Plaintiff's Ex-ibit Number 10, which is a photograph taken that ame day but a few hours after the accident.

A. Yes.

Q. Will you examine the photograph? It has ɔreviously been marked by one witness with an R-1 and that is the lower hold where the work was eing done. A. Yes.

Q. Is that where Williams was at the time?

(Testimony of Romeo Paquette.)

A. That is where Williams was. [133]

Q. And there is an R-2 at the lower 'tween deck level. A. Yes.

Q. It appears from this photograph, and I want you to tell me whether it is right or wrong, that the second section of hatch boards has been removed. Was that done after the accident?

A. That I don't remember, whether it was done after the accident. If they had removed that—if they had removed that before the accident, that probably would have taken out that strong back.

Q. You mean the Number 2 strong back?

A. The Number 2, the one that fell down.

Q. This photograph shows the Number 2 strong back as being absent. Where was that placed? Was that hauled up to the main deck, do you remember, after the accident?

A. You mean the one that fell down in the hold?

Q. After the accident.

A. After the accident it was brought up on top and examined. They photographed both ends of it.

Q. The strong back that is still in place here after the accident, is that Number 3, this flat one here right opposite R-2?

A. It probably is Number 3.

Q. Did work continue?

A. I don't see the slots for Number 2 here. I just see one [134] slot here.

Q. This photograph has been taken from the edge of the hatch.

A. That is not the full photograph.

Testimony of Romeo Paquette.)

Q. That is right. This photograph does not show he complete forward edge of the hatch.

A. That is why you can not tell which strong ack is there and which is out. If we had a com-lete photograph of the whole hold, we would know hich one is Number 1 and Number 2.

Q. After the accident, and under the conditions hown in this photograph, did you continue to load rums into Number 1 lower hold?

A. After the man was taken care of and every-hing, we proceeded with the work.

Q. He was removed from the hold, Mr. Pa-uette? A. He was.

Q. Mr. Paquette, how long does it take to re-nove a section of hatch boards and supporting trong backs?

A. Depending on how many men goes after it; f the whole gang starts off, in less than ten min-tes you would have it off.

Q. Are you familiar with the Pacific Coast afety rules?

A. I am not familiar with all of them because n three years' time they have put in a lot of new ules.

Q. At the time of the accident?

A. At that time we had a rule basis, to work s directed by the bosses. They are supposed to now the safety rules, and [135] the steward of he gang, and if we think it is unsafe, well, we an refuse to do it, but we can get fired for not oing it.

(Testimony of Romeo Paquette.)

Q. When you say "the bosses", who do you mean?

A. I mean a walking boss and the boss of the gang.

Q. Did you see the strong back actually fall into the lower hold?

A. I saw it, certainly. I am right there. I am the guy who's hoisting it.

Q. Where did it hit?

A. Where it came off of the bridle. One end fell down. The other end, I couldn't say where it went. It went into the sweat boards.

Q. Did it bounce after that?

A. There isn't much bounce in a strong back. Once it hits, it hits.

Q. Did you see it strike?

A. I didn't see it strike Mr. Williams. I didn't see anybody down there.

Q. Which end of the strong back did you pull out of the slot?

A. I pulled out the port side.

Mr. Gerhardt: That is all.

Cross Examination

By Mr. Taylor: Q. Mr. Paquette, did you observe the strong back after it was brought up on the deck after the accident? A. I did. [136]

Q. Did you look at both ends of the strong back?

A. No, I just looked at one end. There was no lock on it, and that was sufficient for me to look at.

(Testimony of Romeo Paquette.)

Q. When you say there was no lock on it, you mean there was no little dog—there was no bolt or no——

A. There was no bolt or no lock.

Q. That piece of metal that falls into the notch.

A. That is what they call the lock.

Q. That was missing, as well?

A. That was missing as well.

Q. I will show you Plaintiff's Exhibit 8, which has been admitted in evidence, and it has been stipulated that this is an end of the strong back taken on the opposite side of where that little piece of metal is. A. Yes.

Q. But this one shows a bolt? A. Yes.

Q. Is that the condition when the lock is in place, the little metal being on one side and the bolt going all the way through to fasten it?

A. The bolt goes through. There is a nut on one end on that little piece. Metal is on either side. They can put it either side. There is no specified side to put it on. Every ship has different kinds of locks.

Q. There are notches on both sides for the little dog to fall [137] in? A. Yes.

Q. But when you saw it, this bolt that is shown in Plaintiff's Exhibit 8 was not present?

A. It was not.

Q. There was just the hole there?

A. That is all.

Q. On the other end did you make any observation as to what the condition was?

(Testimony of Romeo Paquette.)

A. No, I didn't make no observation on the other end.

Q. Mr. Paquette, you have been a longshoreman for, I believe you said, 33 years?

A. Yes, sir.

Q. Do you know of your own knowledge that when there is a lock missing on one end it is impossible to lock the other end, even though there is a bolt, to a little dog that would go in the latch, is that correct?

A. Well, if there is one lock on one end and you have the lock on the other end, it is not impossible to lock it. You just flip it over to lock it.

Q. I think you misunderstood my question. When one lock is missing entirely——

A. Yes.

Q. ——and even though the other is in locking position—— A. Yes.

Q. ——still one end can be lifted out? [138]

A. Yes.

Q. Because there is no lock, isn't that right?

A. It can be lifted up, but if this accident—if I had had the bridle on the other end that was locked, it would never have come out. But I had the bridle on the end where the lock was not on, and it doesn't take much weight to lift up one end, when one end is secured.

Q. Before this accident happened, did you know there was no lock on that one end?

A. No, I didn't know.

Q. As I understand it, on that particular morn-

(Testimony of Romeo Paquette.)

ng, no one had told you, giving you instructions o take out the next section of boards and the Number 2 strong back?

A. No. If they did, they would have been removed, because that is our job, to do what we are old.

Q. Incidentally, what is the size of the hook hat is used on this bridle that is shown in Plainiff's diagram 3? What is the size of that hook?

A. It wouldn't be over two and a half, three nches long.

Q. What is the width of the opening?

A. I wouldn't say. Some of them have larger openings than others.

Q. Approximately.

A. Well, the wire we use is 5/8ths of an inch and there is little space for it to hook on. I wouldn't really know. I [139] never took a rule and measured the hook.

Q. But the wire that hooks into it is 5/8ths of an nch, something like that? A. Yes.

Q. That is diameter? A. Yes.

Q. Had you worked the ship the day before?

A. Yes.

Q. But you had not worked the lower hold the day before?

A. I don't recollect working the lower hold. We removed drums.

Q. You were discharging the day before, is that right? A. Discharging, yes.

(Testimony of Romeo Paquette.)

Q. From the shelter deck to the 'tween deck, is that right? A. I think so, yes.

Q. Mr. Paquette, I believe you said that the hook came in contact with the port side, the port side of the strong back.

A. That is true, yes.

Q. Could you tell at that time whether it was the port side or the port end of the strong back that did not have a lock?

A. Well, that was the port side that didn't have a lock.

Q. You know that of your own knowledge?

A. Yes. Otherwise they wouldn't have came out of there.

Q. During the morning that you were working the Number 1 hatch, were any of the ship's officers around? [140]

A. There probably was some around, but I didn't have any business with them, so I really wouldn't know. They are always around when there is a ship in port.

Q. On the day before the accident, while you were working the winch, were the ship's officers there around the Number 1 hatch?

A. I couldn't say for sure.

Q. Did you see any of the ship's officers down below during the period of time that you were working the Number 1 hatch, either the day before the accident or the day of the accident?

A. I don't recollect seeing any of them. They may have been there, but I had no dealings with

(Testimony of Romeo Paquette.)

them. So it makes no difference to me whether they are around the hatch or not if I don't see them.

Q. You didn't pay particular attention?

A. No. If I had business with them I would know.

Mr. Taylor: That is all, thank you.

Redirect Examination

By Mr. Gerhardt: Q. Mr. Paquette, Mr. Taylor has referred you to Plaintiff's Exhibit 8 showing a typical strong back. A. Yes.

Q. Is there a lip on the upper top side of that strong back?

A. There is a lip on both sides.

Q. Do you know which part of the upper or the lower side of the strong back was contacted by the bridle? [141]

A. Yes, sir, I believe it was the bottom.

Q. You believe it was the bottom?

A. Yes.

Q. Do you know what part of the bridle actually contacted the strong back?

A. It was the top edge of the hook.

Q. The top edge of the hook? A. Yes.

Mr. Gerhardt: That is all.

Mr. Taylor: Just one or two questions.

Recross Examination

By Mr. Taylor: Q. Of your own knowledge as longshoreman, is it the duty of the longshoreman

(Testimony of Romeo Paquette.)

to furnish the locks that go on the strong backs?

A. Not that I know of.

Q. Is that the ship's responsibility to furnish a strong back with a lock?

A. A strong back is the ship's equipment. It must be the ship's responsibility.

Mr. Gerhardt: We have stipulated this was missing and the ship was unseaworthy in that regard.

The Court: Proceed.

Mr. Taylor: Q. Have you as a longshoreman ever put a lock on a strong back? A. No.

Q. You have never replaced one yourself?

A. No. There are some kinds of ships with longshoremen, they [142] request a bolt. Some ships have a hole right through and they put the bolt in. When the bolt is missing, they ask the mate for the bolt and the longshoreman puts it in there. That is the only operation the longshoreman does on the lock, but he doesn't install the lock.

Q. That is on a different type of strong back, isn't it?

A. Yes, that is a different type.

Q. The strong back that was involved on the President Polk was the kind where the lock comes installed, that is, the locking device comes installed in the strong back, isn't that correct?

A. Well, it probably was put there after they built the ship. Years ago they didn't have any locks on strong backs.

Q. But this is a part of the strong back?

A. Yes.

(Thereupon the witness was excused.)

(Recess.)

FRED KELLBERG

vas called as a witness on behalf of the plaintiff, nd being first duly sworn, testified as follows:

The Clerk: Q. Will you please state your name o the Court, sir?

A. Fred Kellberg.

The Court: You talk louder than that at the vaterfront, don't you? [143]

The Witness: Yes, I do, your Honor.

The Court: It will help the reporter and the ttorneys on both sides if you will raise your voice.

Direct Examination

By Mr. Gerhardt: Q. Where do you live, Mr. Kellberg?

A. 2427 31st Avenue, San Francisco.

Q. What is your occupation?

A. Longshoreman.

Q. How long have you been engaged in that ccupation? A. About 33 years.

The Court: Q. This port?

A. Yes, sir.

Q. All of those years? A. Yes, sir.

Mr. Gerhardt: Q. Were you aboard the President Polk on January 30th, 1952 when an injury ccurred to Mr. Williams? A. I was.

Q. What was your position at that time?

A. At that particular hour, I was the hatch ender.

(Testimony of Fred Kellberg.)

Q. You were sent aboard by Marine Terminals as part of a gang? A. Yes, sir.

Q. What gang? A. 116.

Q. And did you alternate with Mr. Paquette as hatch tender and winch driver? [144]

A. Yes.

Q. At the time of the accident you were occupying the position, you stated, of hatch tender?

A. That is right.

Q. What are the duties of a hatch tender, Mr. Kellberg?

A. Well, on an American ship you stay at the railing and give the winch driver the sign to go up or down on the stuff, because he can't see the dock. That is all I have to do on an American ship.

Q. The President Polk is an American ship?

A. That is right.

Q. Are you familiar with the Pacific Coast Marine Safety Code and Rules in existence at that time? A. I think so.

Q. On the day of the accident, January 30, 1952, did you go to work as winch driver when you first aboard the ship that morning? A. Yes.

Q. Did you have any discussion with the walking boss, Mr. Bleile, regarding the removal of a strong back in the lower 'tween decks?

A. No, sir.

Q. Were you present when any discussion with him took place?

A. No, not as I can recall. I didn't hear anything.

(Testimony of Fred Kellberg.)

Q. Did you actually see the accident, Mr. Kellberg? [145] A. No, I did not.

Q. Where were you at that time?

A. At the railing.

Q. What called your attention to the accident?

A. Well, in an accident, lots of commotion, and I hear the crash, naturally, and so I looked down the hatch and I see a strong back laying down the lower hold there. The first thing I did, I run back to the railing and told the men on the deck to get the stretcher, because that is all that was necessary.

Q. Did you see Mr. Williams?

A. No, I didn't see Mr. Williams.

Q. Did you go down into the hold?

A. No, I got no business down there. They won't let me.

Q. Was Mr. Williams removed from the hold by stretcher? A. Yes.

Q. Later that day did you continue to work in the hold? A. That is right.

Q. Was any change made in the hatch boards or beams in lower Number 2 hold as far as the removal of boards?

A. The first thing, we took the strong back on deck.

Q. Did you open any more of the hatches?

A. I don't recall that we did because there was another gang working there. The way the top of those hatches are, there was no hatches removed so far as I can recall. [146]

(Testimony of Fred Kellberg.)

Q. You do not know whether there was or was not? A. No, I can't recall.

Mr. Gerhardt: That is all.

Cross Examination

By Mr. Taylor: Q. Mr. Kellberg, you say that there was another gang on one of the other decks?

A. Yes.

Q. Was that the 'tween deck?

A. The lowest 'tween deck.

Q. There was a gang working the lower 'tween deck? A. So far as I recall, there was.

Q. There had to be strong backs in place at the lower 'tween deck so that those individuals would have a place to stand, is that right?

A. That is right.

Q. I believe that you said that the strong back was hauled to the deck? A. Yes.

Q. Did you examine the strong back after it arrived at the deck?

A. Well, I recall I looked at the one end of the strong back and there wasn't a safety lock at the end I looked at.

Q. The end you looked at had no safety device at all? A. No.

Q. Is that right? [147]

A. That is right.

Q. Is that the first time you became aware of the fact that there was no safety device on that particular strong back?

A. Yes, sir, that is right.

(Testimony of Fred Kellberg.)

Q. Of course, you being at the railing, you couldn't see down into the hold at the time of the accident?

A. No, sir, I didn't see the accident.

Q. Of your own knowledge, you do not know what caused the accident? A. No, sir.

Q. Mr. Kellberg, what is the purpose of a lock on a strong back?

A. Well, it is called a safety lock. It simply means when that lock is in place the strong back is safe.

Q. Does that mean it can not be lifted out of its slot? A. That is right.

Q. So that the lock in position prevents the strong back from coming out? A. Yes.

Q. As I understand your testimony, Mr. Kellberg, you do not recall whether or not after this strong back, the one that fell, was removed to the deck, you do not recall whether or not the hatch boards were taken off that section?

A. No, I can't remember that, no.

Q. Do you recall whether or not there was any cargo on top [148] of the hatch boards on the section that was right next to the section that was open? Do you understand my question?

A. Yes, I do, but I guess there couldn't be no cargo. If there had been, I guess that would fall down too. If there had been cargo. Maybe there was. When the two sections are on I can't say, I can't see from on top what really is underneath there.

(Testimony of Fred Kellberg.)

Q. To the best of your recollection, how many sections were removed, how many were off at the time of the accident? A. One section.

Q. Just one section? A. Yes.

Q. Do you recall what the situation was with regard to the section which was right next to the section that was removed before the accident?

A. Well, the strong back was off and hatch was on, naturally. There was nothing else I could see.

Q. Was that where the men were working?

A. Yes.

Q. Where the men were working before the accident? A. That is right.

Q. That is the gang on the lower 'tween deck.

A. Yes, on the after end.

Mr. Taylor: That is all.

Redirect Examination

By Mr. Gerhardt: Q. Mr. Kellberg, if Number 2 strong back is a king beam, and if that is removed, do you have to remove the next section of hatch boards? A. Well, oh, sure.

Q. Do you have to take off the next section?

A. Absolutely.

Q. Let me refer you to Plaintiff's Exhibit Number 10, which is a photograph taken a few hours after the accident on the same day, January 30, 1952, and on which the mark R-2 designates the lower 'tween deck level. A. Yes.

Q. I show you what has been testified to by one witness as a safety net stretched across the end of

(Testimony of Fred Kellberg.)

one section of hatch boards, and I show you there is the foot of a man at the top there. A. Yes.

Q. What is the purpose of that safety net?

A. Well, just for the man that is working right there, so they don't go down to the lower hold.

Q. Work continued, did it not, on the after section of the hatch in the lower 'tween deck?

A. So far as I can recall, it did, yes.

Q. You were asked on the cross examination, Mr. Kellberg, and you testified that when the safety latch was in place, it meant to you that the beam was safe. What does it mean to you [150] when the safety latch is not in place or not locked?

A. It means it is unsafe.

Mr. Gerhardt: That is all.

The Court: Is that all from this witness?

Mr. Taylor: No, one more question about this net, if the Court please.

Recross Examination

By Mr. Taylor: Q. Showing you Plaintiff's Exhibit 10, being a photograph, you have pointed out a net which is at the lower 'tween deck level.

A. Yes.

Q. Do you know of your own knowledge when that net was put in place, that is, in the location where it is on the lower 'tween deck level?

A. No, I do not, because that is always put up by the other men, you see. I wasn't working with them. They had to be safe there. Our gang was working down here.

(Testimony of Fred Kellberg.)

Q. This is another question. Do you know whether or not at the time of the accident there was a safety net at a location more forward than the location as shown there?

A. I wouldn't know that.

Q. You wouldn't know one way or the other?

A. No, sir.

Q. But it is the practice of longshoremen to work on one side of the net? [151] A. Yes.

Q. In this particular picture, this man is shown with his foot on one of the hatch board sections. Do you know if that section he is working is to the aft of the ship or the fore part of the ship?

A. It is to the aft of the ship. Here is where we was working.

Q. You are indicating where the numbers are in the lower hold?

A. That must be the bow end of the ship.

Q. I am asking you.

A. Yes, that is the way the picture looks to me.

Q. This particular hatch has three sections, is that right? A. Yes.

Mr. Taylor: No further questions.

Mr. Gerhardt: Q. Mr. Kellberg, when men are working on hatch boards, and a section of a hatch is open to a deck below, is it the practice to put up a safety net across the end of the hatch boards?

A. Yes, it is at all times.

Mr. Gerhardt: That is all. [152]

REUBEN SWANSON

vas called as a witness on behalf of the Plaintiff, ınd being first duly sworn, testified as follows:

The Clerk: Q. Please state your name to the Court, sir. A. Reuben Swanson.

Direct Examination

By Mr. Gerhardt: Q. Where do you live, Mr. Swanson? A. 2527 28th Avenue.

Q. What is your occupation?

A. Longshoreman.

Q. How long have you been engaged in that work? A. Oh, about 35 years.

Q. Are you still doing that work, Mr. Swanson?

A. No.

Q. Are you retired now? A. I am retired.

Q. On January 30th, 1952, were you aboard the President Polk at the time an accident occurred to Mr. Williams?

A. I was not. I was on the dock at the time the ıccident occurred.

Q. Were you a part of the gang number 116 ıboard the ship at that time?

A. I didn't get——

Q. Were you a part of the gang number 116?

A. 16, you mean.

Q. Yes. A. Yes, sir. [153]

Q. Were you a part of that gang?

A. Yes.

Q. Were you employed by Marine Terminals?

A. Yes.

(Testimony of Reuben Swanson.)

Q. On the morning of the accident, Mr. Swanson, what position did you occupy with the gang?

A. As a gang boss.

Q. As the gang boss? A. Yes.

Q. Who was your immediate superior?

A. Ernie Bleile, I think it is.

Q. The walking boss?

A. Walking boss, yes.

Q. At the time of the accident you were actually there, did you say, on the dock?

A. I was on the dock at the time it happened.

Q. That morning prior to the accident did you know there was a safety latch missing on Number 2 strong back on the lower Number 1 'tween deck?

A. Yes, my steward told me that the lock was missing.

Q. That is, the gang steward?

A. The gang steward.

Q. Was that Mr. Edward Randolph?

A. Edward Randolph.

Q. He told you what? [154]

A. He told me that there was a lock missing on a strong back down below.

Q. In the lower 'tween deck?

A. In the lower 'tween deck.

Q. What did you do about that?

A. Well, I couldn't do nothing about it because I couldn't take it on myself to tell the boys to take the section off.

Q. Isn't that part of your duties?

A. My duty would be, I guess, to go to the walk-

(Testimony of Reuben Swanson.)

ing boss first and tell him about it and for him to decide.

Q. Did you go to the walking boss?

A. I did not.

Q. You did not go to him? A. No.

Q. Why not?

Mr. Taylor: Just a minute. I think that is argumentative. It is his own witness.

The Court: The objection will be overruled. You may answer.

Mr. Gerhardt: Q. Why didn't you go to your walking boss about this condition?

A. Why I didn't go?

Q. Yes.

A. Well, I don't know. I know it was unsafe to work there.

Q. You did know that? [155]

A. The boys, they was told to go down the lower hold that morning. They went down, and they didn't say nothing until a few minutes afterwards.

Q. Who told them to go down there?

A. Well, I told them to go down to the lower hold and start to work.

Q. What do you mean, they didn't say anything until a few minutes afterwards? Did they say something to you? A. Afterwards, yes.

Q. You do not mean after the accident?

A. No, no, before the accident.

Q. Did you discuss that with Mr. Bleile, the walking boss?

(Testimony of Reuben Swanson.)

A. I did not because the boys had told him already, as the steward had told me.

Mr. Taylor: Just a minute. I will ask that that go out as being hearsay.

The Court: The objection is sustained.

Mr. Taylor: I ask that it be stricken.

The Court: It may go out. Develop the facts, whatever they may be.

Mr. Gerhardt: If your Honor please, I think that is pertinent as to the reason why he did not report it, even though it is hearsay. I do not offer it for proof that two of the other men told him. I offer it for the purpose of showing the reason he has given as to why he had not reported [156] it to the walking boss.

The Court: The Court has ruled. You may develop the facts, whatever they may be.

Mr. Gerhardt: Q. Did you make any examination of this Number 2 strong back yourself, Mr. Swanson?

A. I wasn't down in the morning when we turned to at eight o'clock. I didn't go down into the hold. They were all in the square of the hatch. The boys knew what to do, so I told them to go down there and start to load drums. So there was no discussion to be made, just to tell them to go down there.

Q. To lower drums into the lower hold?

A. Yes.

Q. How long after that was it called to your at-

Testimony of Reuben Swanson.)

ention as gang boss that this latch was missing on Number 2 strong back?

A. Well, that was just a few minutes after that hey went down that Randolph told me there was a ock missing.

Q. Did you make any report to have the strong ack removed? A. I did not.

Q. And why not?

A. Because there was a gang working in the after end, and that gang had refused to work on one ection. So they wanted the two sections to work, o we had only one section to work.

Q. So you left the beam in place in order to ermit the other gang to work on the after section, s that right? A. Yes, sir. [157]

Q. Even though you knew it was unsafe at the ime for the men below? A. Yes.

Mr. Taylor: That is argumentative, your Honor.

The Court: He may answer. What is the answer? Did you answer that yes?

The Witness: Your Honor, I don't understand it right now.

The Court: Develop the facts.

Mr. Gerhardt: Q. At the time you permitted the Number 2 strong back to remain in place——

A. Yes.

Q. Was it in an unsafe or safe condition?

A. It was unsafe.

Q. What are your duties as gang boss, Mr. Swanson?

A. Well, to get orders where to work, where to

(Testimony of Reuben Swanson.)

go in the morning or whenever you start, and he tells me what to do or where to place the cargo, and I tell them where to place it.

Q. What are your duties as to safety?

A. My duties for safety?

Q. Of the men.

A. To look that everything is safe for the men.

Q. Are you familiar with the Marine Safety Code that was in effect at that time?

A. Well, I guess I am. [158]

Q. And with the various rules about stopping work if there is any unsafe condition?

A. Yes.

Mr. Gerhardt: That is all.

Cross Examination

By Mr. Taylor: Q. Mr. Swanson, what time did you go aboard the Polk on the day of the accident?

A. Eight o'clock.

Q. Approximately when was the accident itself?

A. Well, I should say about 9:30 or a little better. Around 25 minutes of ten.

Q. Had you been down in the lower hold at all that morning? A. Not that morning, no.

Q. Had you been down in the lower hold the morning before? A. No.

Q. Was there any restowage of cargo on the lower 'tween deck on the day of the accident?

A. No, no restowing of cargo.

Q. Do you know anything about a complaint having been made that there were drums at the

(Testimony of Reuben Swanson.)

lower 'tween deck level which were too close to the coaming? A. Yes.

Q. Do you recall that incident? A. Yes.

Q. When did that take place? [159]

A. Well, they talked about it the first day, but there was nothing done about it. They talked about it. The gang steward said those drums are unsafe.

Q. You mean a complaint was made the first day? A. Yes.

Q. The drums at the lower 'tween deck level were unsafe? A. That is what they said.

Q. Were those drums restowed?

A. No, we never restowed them.

Q. They were never restowed?

A. No, we took them out.

Q. When were they taken out?

A. They were taken out the second day.

Q. Were they taken out before the accident?

A. Yes.

Q. The morning before the accident?

A. Yes.

Q. And they were later put back?

A. No, I didn't put them back.

Q. So far as taking them out is concerned, how long did it take to remove these drums about which the complaint has been made?

A. How long did it take to take them out?

Q. Yes.

A. It took about an hour with the hatches and all. [160]

(Testimony of Reuben Swanson.)

Q. Was that the first thing which was done on the morning Mr. Williams was hurt?

A. I don't recall now if we had taken up any drums at all that morning. I don't recall that. But the boys—they made a complaint about the drums, and at the time the walking boss was alongside the hatch, and then, of course, I think the gang steward talked to him about—. Of course, all of them was talking to him as far as that goes, telling him that was unsafe. So Ernie said, "Take them out."

Q. They were talking about the drums that were along the coaming on the lower 'tween deck?

A. Yes.

Q. And that is the only complaint they made, so far as you know, at that time? A. Yes.

Q. So you took about an hour to take them out. Do you remember about what time it was when you had completely finished that job? The job of taking out these drums?

A. Taking off the hatches?

Q. Yes.

A. Well, it was about an hour.

Q. What time did you finish?

A. Well, say it was about 9:30.

Q. And then it was after that that Mr. Williams went out into the lower hold, is that right? [161]

A. Well, the four of them went down there after we had taken the hatches off. The four of them went down and started work.

Q. Do you know who those four were, the

Testimony of Reuben Swanson.)

rst four that went down into the lower hold on the ıorning of the accident?

A. No, I don't remember that, but I guess you now that we worked a half hour on and a half our off when it is in the square of the hatch, beause there isn't room enough for eight men. So I hink Lewis and I don't—Irvin, a fellow by the ame of Irvin—he is now deceased—and the other wo I don't remember.

Q. They were the first four to go down?

A. I think they were the first ones to go down hat first half hour.

Q. Was Mr. Williams in the first group that vent down in the first half hour?

A. I don't think so.

Q. Was Mr. Randolph in the first four that vent down?

A. No, he wasn't. He was in the second four.

Q. He was in the second four? A. Yes.

Q. And it is your recollection Mr. Williams was ı the second four?

A. In the second half hour.

Q. Yes, the second group of four to go down?

A. Yes. [162]

Q. How long after Mr. Williams went down was t that Mr. Williams was hurt?

A. Well, now, you see, I wasn't on the deck vhen this here happened, but, as I said, it happened round, well, somewhere around twenty-five to ten r something like that. That is the time I would set.

Q. You have told me, you have testified here

(Testimony of Reuben Swanson.)

that the steward told you that one of the locks was missing. A. Yes.

Q. Who was that man? Who was the steward?

A. Eddie Randolph.

Q. Eddie Randolph? A. Yes.

Q. When did he tell you that?

A. Well, it was just a little after they had gone down into the hold that morning.

Q. How long before the accident was it?

A. Well, this here was about a quarter past eight, just after they had started to work.

Q. That he told you this? A. Yes.

Q. Did he tell you this before you stowed these barrels on the lower 'tween deck?

A. The hatches was open. That section of the hatches was open when we came there that morning. So when the boys went [163] down, I heard them talk about the safety lock missing, and that was Randolph, Eddie Randolph told that.

Q. Was that before or after the barrels——

A. That was before the barrels were taken out.

Q. It was some time before the barrels were taken out? A. Yes.

Q. Now, this gang that you have mentioned that was working the after end, they were on the lower 'tween deck, is that right? A. Yes, sir.

Q. How much of the lower 'tween deck were they using in their work? Were they using the two sections that were left?

A. Well, they were landing on the after section.

Q. Yes.

(Testimony of Reuben Swanson.)

A. That was where they was working, you might say. They were landing a load on the after section, but the middle section, there was all kinds of lumber and things like that laying on that section in the after part of the middle section.

Q. The after part of the middle section had——

A. The boys, you know, when they are working, taking cargo out and so on, if they have any loose dunnage and so on, they generally have some slings there ready, and they throw the dunnage on the slings ready to take it out.

Q. Was there a safety net there?

A. That I couldn't recall. I don't remember if there was or [164] not.

Q. That is, before the accident you do not recall whether there was a safety net there or not?

A. You see, all that stuff laying on the hatches and so on, many times they don't bother putting up the safety net. There is all kinds of lumber laying there, but it is supposed to be there, of course.

Q. After the accident, was a safety net rigged up? A. That I don't remember, either.

Q. You do not recall? A. No.

Q. We have a picture here, Plaintiff's Exhibit Number 10, which shows a safety net on the lower 'tween deck, does it not?

A. Yes, it shows.

Q. Do you know when that safety net was put in that position?

A. I don't recall it, I don't recall it, because

(Testimony of Reuben Swanson.)

after we got the strong back up on deck and so on and took all the pictures, and everybody was around there, I didn't watch down in the hold and so on and so forth.

Q. You don't know when this picture was taken?

A. No, I don't.

Q. Did you examine the strong back that fell, after it fell?

A. On deck, yes. I watched it on deck when I came up.

Q. What was the condition?

A. Well, there was no lock on the port side, just the hole, [165] that is all.

Q. Not even a bolt through, is that right?

A. No bolt or nothing.

Q. What was the condition of the other end?

A. I really don't recall that, neither, I really don't.

Q. You just took at look at one end and saw there was no locking device at all?

A. If I'm not mistaken, I think there was a lock there.

Q. You mean on the other end?

A. On the other end, yes.

Q. You told us in your testimony this morning that a strong back without a lock was unsafe?

A. Yes.

Q. Why is it unsafe?

A. Well, because if you hit it with a load or a sling going up, and you have some speed to it, it

(Testimony of Reuben Swanson.)

don't take much to take that strong back off at one end.

Q. If there is no lock, there is nothing to hold the strong back in the cleat or slot, is that right?

A. Yes.

Q. And without a lock, it can be moved out of the slot, is that right?

A. It could be easily done, yes.

Q. Just one more question. Mr. Swanson, on the morning of the accident, before the accident, did you see any ship's [166] officers around the Number 1 hatch?

A. I don't recall that at all. I don't even know any of the officers on board there. I don't remember seeing anyone on board.

Q. Do you remember seeing any ship's officers or men below the decks on the day of the accident?

A. No, I did not.

Q. How about the day before?

A. I was there then, but I didn't see none of the officers. Maybe I seen them, but I didn't know them.

Mr. Taylor: That is all.

Mr. Gerhardt: That is all.

(Witness excused.)

CHARLES M. HAID, JR.

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Q. Please state your name to the Court. A. Charles M. Haid, Jr.

(Testimony of Charles M. Haid, Jr.)

Direct Examination

By Mr. Gerhardt: Q. Mr. Haid, what is your address?

A. At the present time 1650 Russ Building, San Francisco.

Q. What is your profession?

A. I am an attorney.

Q. You are licensed to practice in the State of California?

A. Since 1941 and at the present time.

Q. During 1952, with what firm were you working? [167]

A. I was a member of the firm of Treadwell and Laughlin, having offices in the Mills Tower.

Q. Did you handle a case that had been filed in the State Court named Robert Williams versus the American President Lines, Ltd.? A. I did.

Q. Was a settlement of that case made, Mr. Haid? A. There was.

Q. I will show you Plaintiff's Exhibit Number 19 and ask you what that is.

A. This is the release that I prepared in connection with the settlement of the Williams case against American President Lines and presented it to his attorneys at the time, and secured Mr. Williams' signature and that of Mr. MacMurray, one of Mr. Williams' attorneys.

Q. Did you obtain this in exchange for certain funds?

A. Yes, I procured from American President Lines a check in the amount of $62,500.

(Testimony of Charles M. Haid, Jr.)

Q. I will show you Plaintiff's Exhibit 20.

A. This is the check that I exchanged with Mr. Williams and his attorneys for the release.

Q. Mr. Haid, preparatory to obtaining the release and settlement, did you conduct any negotiations with the attorneys for Mr. Williams?

A. Very extensive negotiations. [168]

Q. Will you please tell us the nature of those negotiations and the extent of the same and the factors—first of all, please state the extent and nature of the negotiations.

A. Commencing perhaps late in November, 1952 or early in December, 1952, the case against American President Lines being at issue, having a trial date in the Superior Court, as in the usual instance, the attorneys for the plaintiff and the defendant do have discussions, and we did in this case concerning the matter of the trial or settlement. Those negotiations and conferences between Mr. MacMurray and Mr. Andersen on behalf of Mr. Williams and myself on behalf of American President Lines went on, I would say, for about two months anyway, discussing the facts of the case from both sides, the nature of the injuries received, the problems of legal liability, and the demand made by Mr. Williams' attorneys in respect to settlement.

Q. What were those demands?

A. The initial demand in respect to a settlement that I received was in the amount of $90,000. We negotiated at great length, Mr. MacMurray, Mr.

(Testimony of Charles M. Haid, Jr.)

Andersen and myself, and I was able to secure successive reductions in that demand down to a stated absolute flat minimum of $75,000 or trial.

Q. Did you have any further negotiations after that?

A. Yes, I did. I would say late in December and early in January, we continued our negotiations after I received that [169] stated flat minimum of $75,000, and I was eventually able to secure further reductions in the demand, although I had been told time and again that the stated flat minimum was not going to be—anything below that was not going to be recommended to Mr. Williams by Mr. MacMurray or Mr. Andersen. Notwithstanding that fact, I was able to secure further reductions, and eventually we arrived at the settlement that was achieved of $62,500.

Q. What factors, insofar as the injuries to Mr. Williams were concerned, were taken into consideration by you in that settlement figure?

Mr. Taylor: Your Honor, I do not know that that is pertinent insofar as this witness is concerned. This man is not a medical man. That is, I assume he does not have a medical degree along with his law degree. But it would seem to me any information he had about injuries would be hearsay compiled upon hearsay, and it would not be proper for him to express an opinion as to the medical picture of this man. I think the doctors can do that.

Mr. Gerhardt: Q. Let me ask you this, Mr.

(Testimony of Charles M. Haid, Jr.)

Haid: Did you receive a report of the medical findings? A. I did.

Q. And of the treatment that had been given to Mr. Williams? A. I did.

Q. And that was a report of whom? [170]

A. Dr. Rodney Yoell, who was the doctor who treated Mr. Williams on behalf of the compensation carrier for Marine Terminals, and who also was chief surgeon for American President Lines, oddly enough.

Q. What factors other than the medical data, which we shall obtain through a doctor later on, did you take into consideration in entering into this settlement at $62,500?

A. Well, I was, of course, greatly concerned with the medical situation in that it pointed out to my mind a rather substantial wage loss during the time that Mr. Williams was incapacitated, and was going to continue for a number of months, perhaps six or more after the time when we first began settlement negotiations.

Q. Let me interrupt you just a moment, Mr. Haid. Approximately how many months did you consider he would be out of work?

A. Eighteen months.

Q. And you computed that at about how much per month? A. About $400 per month.

Q. Proceed, please.

A. In addition to the actual wage lost, as I said, during the period of Mr. Williams' incapacity, there was the further problem of estimated wage

(Testimony of Charles M. Haid, Jr.)

loss in the future because of the nature and extent of his disabilities. Then in addition thereto, I was concerned with the rather substantial compensation payments that had been made. [171]

Q. Do you recall about how much that compensation lien was?

A. To my best recollection, it was around, very close to $2,000, give or take $100. In addition, there were the medical bills and expenses which had been run up over the period of time that Mr. Williams had been treated.

Q. Approximately what did those special damages total?

A. My best recollection of it at this time is that it was very close to $10,000, somewhere between $9,000 and $10,000. Oh, just the medical bills?

Q. No, the entire——

A. The entire special damages, to my recollection, is between $9,000 and $10,000, just through the period of time that Mr. Williams was going to be incapacitated, and that, of course, took no account of his future wage loss, general incapacity and things of that nature.

Q. During that period of time, did you ever have an opportunity to personally observe Mr. Williams? A. Yes, I did.

Q. Under what circumstances?

A. I took his deposition in my office. I believe it was sometime during the fall of 1952, and I had a very good opportunity to observe him at that time.

Q. What was his appearance at that time?

(Testimony of Charles M. Haid, Jr.)

A. Mr. Williams appeared to me at that time to be in pain over the injuries that he had received. When he came into the [172] office, he was using either one or two canes at the time—probably one—and he had to use a pillow on the chair on which he was sitting, and at various times during the course of the deposition, which didn't take more than perhaps, oh, maybe an hour or hour and a half; but he had to get up and move around. We had to stop the deposition from time to time so that he could exercise himself in various ways to relieve the pain which he stated was present in his back and in his hip.

He also appeared to be in a very nervous condition and somewhat irritable, too.

In general, he appeared to me to have received a very serious injury at the time he stated he did, and he was still suffering pretty much from the effects of it.

Q. You took his testimony at the time, did you?

A. Yes, I did.

Q. By deposition? A. Yes.

Q. Was the deposition used in your determination of an ultimate settlement of this matter?

A. Oh, yes, it was.

Q. And that was the deposition that was taken October 7, 1952? A. Yes.

Q. Did you have an opportunity to observe Mrs. Williams at any time during this period? [173]

A. I did. Mrs. Williams accompanied Mr. Williams to the taking of the deposition, and was pres-

(Testimony of Charles M. Haid, Jr.)

ent at the time. I agreed to her presence in the room while the deposition was being taken because of the representations of Mr. MacMurray, who said that it would probably be a good thing if Mrs. Williams were there to help keep Mr. Williams calmed down.

Q. Was she present all during the deposition?

A. She was.

Q. Did you have an opportunity to observe her during the absence at any time of Mr. Williams?

Mr. Taylor: Your Honor, I am going to object to any observations of Mrs. Williams as being incompetent, irrelevant and immaterial as to Mr. Williams, if your Honor please, which is the subject matter of this interrogation.

The Court: Objection sustained.

Mr. Gerhardt: Q. Did you have any discussion with Mrs. Williams with respect to the physical condition or result of the injuries to Mr. Williams?

A. I did.

Q. Mr. Haid, up to January, 1953, approximately how many personal injury cases, if you can estimate it, had you defended?

A. Well, that is pretty hard to answer, Mr. Gerhardt. I will try to do my best on it, though. When I first started to break in, in 1941, I was there with Treadwell and Laughlin for about a year until I went into the Army, and I was actively [174] engaged most of my time in the personal injury field. After I came out of the Army in 1946, from then on up to the time of, say, January, 1953—that is

Testimony of Charles M. Haid, Jr.)

even years—I had the sole responsibility in the ffice for the handling of all personal injury claims gainst American President Lines. It is hard to ay, but I would say that during those seven years, h, there must have been hundreds.

The Court: We won't be able to get through vith this witness, so we will take an adjournment ntil 2:00.

(Adjournment taken until 2:00 p.m.) [175]

Direct Examination—(Continued)

By Mr. Gerhardt: Q. Mr. Haid, in the hanlling of the defense of these injury cases, do you ive any consideration to awards at the time for udgments in other cases?

A. Oh, very much so, Mr. Gerhardt. That is one f the most important things that the defense or he plaintiff's attorneys is concerned with, how the uries and the judges alone have been dealing with lamage cases, personal injuries. As a matter of act, there has been a constant increase in jury awards and awards by a Court sitting alone.

Q. Did you take into consideration any such actors during the negotiations for settlement of the Williams case?

A. Yes, Mr. Gerhardt, I did. As a matter of act, there were several cases just about that time hat were called to my attention very forcibly in the newspapers and through my own knowledge, very high awards and settlements.

Q. In addition to the facts that you testified to,

(Testimony of Charles M. Haid, Jr.)

Mr. Haid, do you recall any additional factors which influenced you in arriving at a settlement?

A. Yes. One of the primary matters that any defense is concerned with, is, of course, the question of legal liability to the injured person who has filed the suit, based on the investigation that was made and the legal research that I undertook. [176] Taking everything into consideration, I felt that there was a case of absolute liability on the part of American President Lines to Mr. Williams.

Q. On what legal basis?

A. On a seaworthy basis.

Mr. Taylor: Just a minute, before that is answered. I am going to object and ask that the answer be stricken pending the objection.

The Court: It may go out.

Mr. Taylor: Whether or not there was a question of absolute liability on the American President Lines I think is one of the points that your Honor is going to be called upon to decide and to determine, and I do not think it is proper, and we object to this witness making a statement along those lines because of the fact that it is one of the ultimate issues for the court to determine. The second point is, I believe it is a self-serving statement.

Mr. Gerhardt: If your Honor please, it may well be that that question is one for your Honor to decide, and I am calling for this testimony not for that purpose, but opposing counsel has disputed that this was a reasonable settlement, and in ascertaining whether this was a reasonable settlement,

Testimony of Charles M. Haid, Jr.)

think we should determine what counsel had in ind when the settlement was made and the basis or it, both legal and factual.

The Court: For that limited purpose, I will llow it subject [177] to a motion to strike.

Mr. Gerhardt: Q. Were there any additional actors?

A. Yes, there were. I was concerned in large art with Mr. Williams himself, in that, in light f the very severe injuries that he had received, was concerned about the fact that he was a young an. He was only 31 at the time he was so badly urt. He had a long life expectancy before him, nd based upon the injuries, it appeared quite clear hat he would always be a disabled man, and that e would have a certain limitation of motion in arious parts of his body and would be subjected o pain and suffering at various times from time to ime throughout the remainder of his life.

Because of this disability, he would also be lack- ng the opportunity to take jobs on the waterfront s a stevedore that otherwise would have been open o him, in that his disabilities and injuries confine im to certain jobs only rather than the full sweep f jobs that otherwise he would have been able to artake.

Q. In arriving at an ultimate conclusion, did ou confer at all with anyone else in the office?

A. Yes, I did. As a member of the firm of Treadwell and Laughlin, I conferred from time to ime not only on the facts as we developed them

(Testimony of Charles M. Haid, Jr.)
and as were developed by means of deposition and otherwise and the legal problems involved, the value of the case by way of jury trial or settlement —that was all [178] discussed quite thoroughly from time to time with both Mr. Treadwell and Mr. Laughlin.

Q. Were there any other factors that influenced you, Mr. Haid, or have you outlined most of them that you can think of now.

A. Well, other than those that I believe we discussed this morning, I think that pretty well covers it, Mr. Gerhardt.

Q. Based on those factors that you testified to, Mr. Haid, you ultimately decided to settle the case at what figure? A. $62,500.

Q. Based upon these factors that you testified to and your past experience, will you please state whether in your opinion as a lawyer that amount was reasonable or unreasonable.

Mr. Taylor: Before you answer it, I am going to interject the same objection, your Honor, inasmuch as that is one of the points that your Honor will be called upon to determine, and also it is a self-serving statement. This man was a party to this matter and he is attempting to make a self-serving statement in his own behalf.

The Court: You have raised the issue which is here in the pleadings, according to counsel.

Mr. Gerhardt: That is right, your Honor. This man who was the one actively handling the defense of this case—I know of no one better able to evalu-

Testimony of Charles M. Haid, Jr.)

ate a case on a certain basis and on whether he hought that was reasonable or unreasonable. [179]

Mr. Taylor: But, your Honor, it is a self-serving tatement.

The Court: There are exceptions to the rule of self-serving statement. Since you have raised the ssue in the pleadings, I am going to allow the estimony for the limited purpose for which it has een offered. The objection is overruled.

A. I considered that statement to be eminently easonable on the part of the defense.

Mr. Gerhardt: Q. Following the conclusion of he settlement, the transfer of funds and the exeution of the release, was dismissal of the action iled? A. It was.

Q. What was the date upon which settlement vas concluded? A. January 16, 1953.

Q. Do I recall correctly that you testified the ase had been set for trial at that time?

A. It had been set for trial on four separate ccasions in the Superior Court. The first time, I elieve, was in October of 1952. I secured a coninuance from Mr. Williams' attorneys on three eparate occasions, to November, to December, and he absolute last continuance was to January 16, 953.

Q. Following the conclusion of the case, did you ender a bill to American President Lines for legal ervices?

A. Yes, the office of Treadwell and Laughlin lid render a bill. [180]

(Testimony of Charles M. Haid, Jr.)

Q. Do you recall the amount of the bill?

A. $5,000.

Mr. Gerhardt: Counsel, will you stipulate that that amount is reasonable, or do you wish to go into the factors?

Mr. Taylor: I want you to go into the factors. I will not stipulate that that is a reasonable amount.

Mr. Gerhardt: You have seen this bill?

Mr. Taylor: Yes.

Mr. Gerhard: Q. I hand you, Mr. Haid, a document dated January 10, 1955 and ask you what that is.

A. This is the office copy, Treadwell and Laughlin, office copy of the bill that was rendered to American President Lines for services rendered in Williams against American President Lines.

Q. Was there a companion case to Williams against the American President Lines?

A. Yes, there was: Carl Smith against American President Lines. He was a stevedore who was down in the hole with Williams and who, I believe—my recollection is not too good as to Smith, but I believe he was hurt at the time, too.

Q. Had that case been concluded at the time Treadwell and Laughlin was dissolved at the first of this year?

A. Not to my knowledge.

Q. Is that the bill you rendered to American President Lines? A. Yes, it is. [181]

Mr. Gerhardt: I will ask that this be introduced in evidence.

(Testimony of Charles M. Haid, Jr.)

The Court: Let it be admitted and marked next in order.

Mr. Taylor: We are objecting to the exhibit, your Honor, as to the amount only, and we would like the right to cross examine on that.

The Court: You will have full opportunity.

(The bill referred to was thereupon received in evidence and marked Plaintiff's Exhibit 22.)

Mr. Gerhardt: Q. Was that bill paid, Mr. Haid?

A. Yes, it was.

Q. You have already testified this morning to some of the factors that you considered in making the adjustment in this case at $62,500, which included some of the work you did on the defense, but will you please state what other work you did as a basis for your charge in the amount of $5,000 for the defense in this case.

A. Pardon me. Can we go off the record? Dr. Yoell is here.

Mr. Gerhardt: We have told Dr. Yoell we would put him on as soon as he came in.

The Court: Very well. Is there any objection?

Mr. Taylor: No objection, your Honor.

RODNEY YOELL

was called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

The Clerk: Please state your name to the Court, sir. A. Rodney A. Yoell.

(Testimony of Rodney Yoell.)

Direct Examination

Mr. Gerhardt: Q. Dr. Yoell, what is your profession? A. Surgeon.

Q. Licensed? A. Yes, sir.

Q. What medical schools?

A. St. Louis University School of Medicine.

Q. Interneship?

A. St. John's Hospital in St. Louis, for three years; post-graduate work and resident surgeon, St. Francis Hospital, San Francisco, one year; and Europe for nine months.

Q. Medical societies?

A. The American Board of Surgery, fellow of the American College of Surgeons.

Q. Are you connected with any hospitals, Doctor?

A. Yes, I am on the staff of the Polyclinic Hospital.

Q. Do you have any specialties? I beg your pardon for interrupting. Proceed.

A. St. Mary's Hospital.

Q. Do you have any specialties?

A. Surgery.

Q. How long have you been practicing medicine?

A. Graduated in 1917 and started to practice in 1921. [183]

Q. Doctor, this trial involves as one of the issues an injury to a man named Williams, who was admitted to St. Mary's Hospital, according to the record that has been introduced in evidence, on

(Testimony of Rodney Yoell.)

January 30th, 1952. Were you the attending physician for Mr. Williams? A. Yes.

Q. Let me hand this record to you, Doctor. It is Exhibit No. 12. Doctor, when did you first have occasion to see Mr. Williams?

A. I saw him on the day that he was hurt. That was—I can refer to my own record.

Q. Very well, Doctor. Do you have your own record with you? A. Yes.

Q. It was subpoenaed, is that correct?

A. I have been subpoenaed, yes. I saw him on the 30th of January 1952.

Q. At whose request?

A. The Marine Terminal.

Q. Where did you see Mr. Williams?

A. At St. Mary's Hospital.

Q. Did you make an examination of him at the time? A. Yes, I did.

Q. What examination did you make and what did you find, Doctor? [184]

A. I had the history that he had been injured by having been struck by a hatch beam, which is a heavy metal beam, and that he was taken to the hospital. When I saw him he was in shock, evidently, and very severely injured. His legs were paralyzed, his motion was limited. It was my opinion at the time that he had an injury to the spinal cord, either a direct injury to the cord, compression or hemorrhage, and the X-rays, the emergency X-rays showed that he had a fracture of the right side of the pelvis which ran clear through into the

(Testimony of Rodney Yoell.)

right hip joint, and the rim of the right hip joint was torn off and partly displaced. There was a separation of those fragments.

He had a fracture of the sacrum——

Q. Excuse me, Doctor. Are you reading from a report? A. Yes.

Mr. Taylor: Your Honor, may I ask a few questions on voir dire with regard to the X-rays?

The Court: Yes.

Mr. Taylor: Q. Doctor, did you take these X-rays yourself? A. No, sir.

Q. Are you a roentgenologist?

A. No, sir.

Q. You are relying upon the reports that you have to interpret the X-rays? [185]

A. No, I look at them myself, too, and match the findings with the report, with the physical findings and the symptoms. Each one is a link in the chain.

Q. Then you did see the X-rays?

A. Oh, yes.

Q. And you read the X-rays yourself?

A. Well, I looked at them in conjunction with the X-ray man. That is a specialty, too, and I am a surgeon, and we take—they are able to give us a better interpretation than we are.

Q. I appreciate that. Is the report that you are giving of the X-rays, is that your report, or somebody else's, Doctor?

A. No, the report that I am giving is my diag-

Testimony of Rodney Yoell.)

ıosis. It is not the X-ray man's report, but it is ust based partly on the X-ray man's report.

Mr. Taylor: Thank you, Your Honor.

The Court: You may proceed.

Mr. Gerhart: You may proceed, Doctor.

A. He had a fracture of the lower portion of he sacrum—that is the wedge bone, the tailbone f the pelvis. That was separated. And then on the ther side of the pelvis, on the left side, he had a racture of what is known as the lower ramus, the nferior ramus. That is the lower segment or branch f the left pelvic bone, which is the bone that you it on, and that had considerable displacement.

Then he had fractures of the first, second, third nd [186] fourth transverse processes of the lumar vertebrae on the right side. There was concusion and hemorrhage into the spinal canal with nesthesia and discoordination of the feet and toes. That is, he could not execute passive movements, nd he couldn't tell whether his toes were up or own, which toe you were touching, or whether he vas being touched with the head of a pin or the ive point of the pin.

He also had evidence of a rupture of the kidney r a hemorrhage around the kidney and internal bdominal injury, probably a partial rupture of he liver with hemorrhage into the abdominal cavity.

Q. What treatment did you give him, Doctor?

A. We treated him for shock, got him out of is shock, and then we put him in traction, that is, ve put appliances on his legs to stretch the muscles

(Testimony of Rodney Yoell.)

after he was completely out of his shock. We gave him medication for his pain. I believe we gave him a blood transfusion or two, and then after he was out of shock and able to move, we put him into a full body cast, a pelvic cast, and waited.

Q. How long?

A. Well, he was under my care—the last time I saw him, except when he was in the office the other day, was about a year after he was hurt.

Q. Do you know the date of that last examination, Doctor?

A. It is here in the record. I believe it was January 1953. [187] It was February 17th, 1953.

Q. Doctor, how long was he in the body cast?

A. He was in the body cast—I would have to check that with a hospital record—but I would say the better part of nine or ten weeks, about ten weeks.

Q. After the body cast was removed, what was his condition?

A. Well, he was sore, stiff, and had limited motion, and he was on crutches. The injury to the cord had disappeared. He had coordination, he had sensation, but he was still in a condition to need medical care. Getting him out of the cast—when he was out of the cast he was by no means through with his treatments.

Q. Doctor, when was the next examination that you made, or did you continue to make examinations of him in the hospital quite frequently?

A. Yes, I saw him in the hospital twice a day

(Testimony of Rodney Yoell.)

and once a day for a considerable period of time. I saw him on the 30th of January, and I visited him twice again that day, and I saw him the following day three times, and I saw him again for a complete physical examination, neurological examination. Of course, I saw him daily again on 2/1/52 and 2/2/52 I saw him twice a day. On the 6th of February I put him in the full body cast, and then I visited him daily from February 3rd to February 29th. And then from March 1st to March 31st daily.

And then I saw him on the 4th and 5th and right through to the [188] 30th of March, when I did another complete examination. I saw him from April 1st to April 30th, daily, and from May 1st to May 19th, daily.

Q. Did you make a special examination of Mr. Williams during December of 1952?

A. I believe I did.

Q. Can you state what examination you made, what his complaints were and what you found?

A. If Your Honor will excuse me, I grabbed these out of my file. I haven't got them in sequence. Yes, I am examined him in December 1952—the 15th of December or the 14th of December. At that time he had considerably improved. He was off crutches. He was complaining that he had a limp. X-rays were taken and showed that all his fractures except one had healed. He complained of low back pain and limitation of motion, severe pain in the right hip and pain in the right buttocks. He had a limitation of flexion of the hip of

(Testimony of Rodney Yoell.)

about 15 degrees and a limitation of abduction, that is, pulling the limb away from the main line of the body. He gave no evidence of any further sensory disturbance.

Q. By "sensory" what do you mean?

A. I mean he didn't have any zones of either hyperexcitability or less susceptibility. In other words, he had no areas of numbness, no area of soreness, and he was able to tell which toe was up and which was down, which toe we were [189] touching and which areas of skin were being touched.

Q. Proceed, Doctor.

A. Forward flexion, that is, bending forward and touching the floor, was quite painful but he could make it. Flexion of the hip was limited and painful. He had definite limp with limitation of motion in the right hip, limitation of forward flexion of the spine, and his abdominal symptoms had cleared up. So in December he still had a damaged hip and still had a damaged back.

Q. What were your conclusions at that time, Doctor?

A. I thought that the man would ultimately make a recovery so that he could get around without crutches and work, but I didn't want to give a final opinion at that time without the test of effort, because these cases are treacherous. A man may be able, particularly a laborer might be able to move around his house and do light work or something of that sort but he couldn't go out and

(Testimony of Rodney Yoell.)

take a pick and shovel job and do heavy lifting or an occupation requiring agility. And so I thought the limitation that he had in flexion of his spine and the limitation of pain in the hip would be a more or less permanent thing, and I was still a little bit skeptical about what would happen to the cord injury because of the chance of scar tissue formation there, which sometimes occurs.

Q. Doctor, how long do fractures of that type remain painful even after they are healed? [190]

A. Fractures can remain painful for a very long period of time, several years.

Q. Doctor, this limitation of motion in the hip that you mentioned, that was related to what fracture?

A. He broke his pelvis into so many pieces it would be hard to tell just which one fracture would be responsible for his limitation of motion. But the main thing which limited motion was he broke the socket into which the head of the thigh bone rests —in other words, the ball and socket joint. The rim was torn free and shoved down into the joint, and the actual socket into which the head of the bone rested was also smashed, and there had been hemorrhage into that undoubtedly with formation of some adhesions and a narrowing and unevenness of the joint surfaces.

Q. Doctor, what are the possibilities of arthritis in view of the fractures of the hip bone and the pelvis, rather, in that manner?

(Testimony of Rodney Yoell.)

A. Well, where you break into a joint where a fracture line runs into a joint——

Q. Did it run into the joint in this case?

A. Yes, it did. It busted right into it in several places. Where a fracture goes into a joint, the joint is lined with a membrane which is cartilage. That should be smooth, glistening, and allow free motion. When a fracture occurs and the bone heals by callous, there is a roughness caused, and the more [191] roughness of motion, the more the irritation, another drive to throw out a protection, and you can an increase of callous, and any fractures involving the joints—there is not always a condition known as traumatic arthritis, but you may have it and you may not.

Q. Did you make a recent examination of Mr. Williams at our request?

A. Whose request?

Q. At our request.

A. Who is "our"?

Q. Mr. Poole. A. Yes.

Q. What was the date of that examination?

A. That was about a week ago, 6/6.

Q. Will you state, Doctor, what complaints he made, what examination you made, and what you found at that time?

A. He complained of low back pain after he had been working for a while, especially if he had to do any climbing up and down ladders or stairs. He complained also of difficulty in sleeping in any

(Testimony of Rodney Yoell.)

one position for any great period of time, that he would get a pain in his back which would wake him up and he would have to shift his position. He said his back got tired, that is, he would do a certain amount of work, he would be all right for two or three hours, but he would gradually get weaker and he couldn't do the lifting that he ordinarily [192] had been accustomed to do.

Incidentally, this fellow was remarkable because he has an almost perfect body. He is a magnificent specimen, so much so that it was noticeable, and he still had a limitation of motion in his back and a slight limitation of motion in his hip, and it is understandable—I believe the man when he gives the subjective complaints.

He also has a distortion of the framework of the pelvis, which would put certain muscles under strain and after use cause pain, where if the fracture had not occurred he would not have that trouble.

Q. You are talking now about a distortion due to the fracture of the pelvis?

A. Yes, the lower part of the left pelvic bone had overriding fragments, and that changed the angle of the two hips where the thigh bones fit in, and it would be like a loose segment of a hinge. You go to shut a door, and there is a jump to it as you swing the door over, and that is permanent.

Q. Based upon your own examination, and from a medical, reasonable certainty, that is permanent, Doctor?

(Testimony of Rodney Yoell.)

A. Yes, that is permanent. That is a fixed deformity.

Q. Have you anything to add to your prognosis or to the examination that you made just recently, Doctor?

A. The only thing I could add is I think the man's injuries substantiate his claim to pain after considerable use. He is [193] working but he does not—he told me he does not go down into a hold. He stays out of very heavy lifting. He takes sling jobs or drives a jitney. He said he can't go down into the hold because he can't get out of the way quickly enough if anything drops. He has a certain slowness about him and he shows it.

When you strip him, ask him to take his clothes off, he is a little bit slow about it and he doesn't know he is being watched.

Q. You determined that from your examination?

A. Yes. You go out of the room and look through a special hole and see what he is doing. If a man tells you he can't bend over, you knock his hat off the hook and he stoops down to pick it up. You then know he is a fake.

Q. Did you have any suspicion of that in this case, Doctor, when he was putting on his trousers?

A. He steadied himself a little bit. He seemed to me to be telling the truth.

Cross Examination

Mr. Taylor: Q. Doctor, you have been testifying from your own office notes? A. Yes, sir.

(Testimony of Rodney Yoell.)

Q. You have need of those to refresh your recollection of that? A. Yes, sir. [194]

Q. You have had many patients other than Mr. Robert Williams, have you not?

A. Yes, sir.

Q. May I see them? Is this your complete office file, Dr. Yoell?

A. As far as I know, yes.

Mr. Taylor: I wonder if it would not be in the interests of saving time to take a short recess while counsel and I go through these.

The Court: Very well. We will take a short recess.

(Recess.)

Mr. Taylor: Q. Dr. Yoell, you saw Mr. Williams at the request of the Marine Terminals, did you not? A. Yes.

Q. And you continued to treat him at their request, did you not? A. Yes.

Q. The longshoremen's insurance carrier, the Firemen's Fund, paid you for services rendered, did they not?

A. Up to a certain time, yes.

Q. There was a time beyond which Mr. Williams paid you himself?

A. I didn't charge him. When they terminated, I continued to treat him but I never charged him for it.

Q. So you never charged Mr. Williams in addition to what the [195] Firemen's Fund paid you?

A. I got a notice from the Firemen's Fund. It

(Testimony of Rodney Yoell.)

was a little obscure to me. But there was a lawsuit coming along. He was not going to get any more compensation. They would not be responsible for the bills. So the man was not fit to be turned loose without medical observation. I told him to come on, I would take care of him, which I did.

Q. You received a letter which drew your attention to a suit? A. Yes.

Q. You have a copy. I think it is on top here. Is this the document to which you refer, Doctor?

A. Yes.

Mr. Taylor: We will offer this in evidence.

Mr. Gerhardt: No objection.

The Court: Let it be admitted and marked next in order.

(The letter referred to was thereupon received in evidence and marked Defendant's Exhibit A.)

Mr. Taylor: Q. I believe this is dated May 26, 1952, is it not? A. Yes.

Q. At that time Mr. Williams was still in the hospital, wasn't he?

A. I believe he was out of the hospital. I will have to look at the date of the discharge from the hospital. [196]

Q. I think it has been established that he left the hospital on May 29th, 1952.

A. Yes. That would be afterwards, yes.

Q. That was some two or three days after you got the letter?

A. He left on crutches.

(Testimony of Rodney Yoell.)

Q. Do you have a portion of your file that shows the history he gave you of how he received his accident, Doctor?

A. I have down here a note of the history that he gave me. Of course, that is on the first sheet of the industrial report. Working in the hold of a ship, a hatch beam fell or dropped, and struck him after a fall from one deck to another. But he was too sick to do much quizzing when he had been in there. He was a very sick boy.

Q. I notice a history in the hospital record, Plaintiff's Exhibit 12, which states, "Patient admitted after accident at work. Patient states he was hit in lumbar sacral area by a large plank, and this knocked him forward and he went limp, falling to his knees." Is that the history he gave you? A. That is the entrance history.

Q. I see. But you did see him when he was admitted to the hospital?

A. Yes, it was an emergency call and I went right out there.

Q. And he was conscious, was he, when you talked to him?

A. Yes, he was conscious.

Q. And I believe you said he was in shock? [197]

A. Yes.

Q. In my notes here you said his legs were paralyzed.

A. Yes, his lower legs were paralyzed—not his thighs, but his legs.

(Testimony of Rodney Yoell.)

Q. And he moved his legs, or is that just a numbness?

A. No, he couldn't move his toes. He couldn't move his ankles.

Q. But could he move his legs from his hips?

A. Yes, he could move his hips, he could move his legs above his knees, but not below.

Q. How about his knees. Could he move his knees?

A. Partially. It was partial flexion, but he couldn't move at the ankle. He couldn't bend his toes. He couldn't extend his toes.

Q. It was the toes and ankle that were involved?

A. The toes and ankle were involved, and necessarily some of the muscles here (indicating). This is the leg.

Q. Did you give him a neurological examination? A. Yes, several times.

Q. I mean on the day that he went in?

A. Oh, yes.

Q. Is this a result of the neurological examination on the day that he went in, could you tell me?

A. That is the entrance examination.

Q. Could you tell me what the interne found from the [198] hospital record there insofar as the sensory and lower extremities were concerned?

A. If I can read this writing, his modalities appear to be intact.

Q. What does that mean?

The Court: This is the interne?

A. Yes.

(Testimony of Rodney Yoell.)

Mr. Taylor: Q. This says "motor".

A. Yes, that there is sensory.

Q. What does it say about the motor?

A. No muscle power loss ascertained.

Q. What does that mean?

A. That he didn't find any loss of muscle power, any disability of movement.

Q. Would that include the lower extremities?

A. I don't know. He doesn't say.

Q. Did he have certain tests, neurological tests?

A. Yes.

Q. What are the results of those?

A. He had some disturbance——

Mr. Gerhardt: If Your Honor please, is counsel asking the doctor the results of an examination that the doctor made or that someone else made?

Mr. Taylor: It is an interne. That is my understanding, that those are interne's notes? [199]

Mr. Gerhardt: I suggest if you want the interne, Mr. Taylor, that he be called rather than ask Dr. Yoell how he interprets the interne's writing and conclusions.

Mr. Taylor: Q. Doctor, opposite Babinsky there are some symbols. Can you interpret those?

A. I will leave it to you. Is that negative or plus? I can't read that. He had a hieroglyphic here, but here he has positive pathological reflex. Here is pathological reflex. Here is pathological reflex. He has the conventional signs for those.

In explanation, Your Honor, some of these boys from different schools have different symbols for

(Testimony of Rodney Yoell.)

different things and they carry them into interne years. It is a sort of a bastard shorthand.

Q. I am asking you if you can tell what that means.

A. No. He has a Babinsky. I can't tell whether it is positive or negative. A minus sign would be negative. Here he has positive, positive, positive.

Q. Can you interpret those?

A. Yes, I interpret those as disturbance to his reflexes and injury to his cord.

Q. That was on the first day that he was in?

A. Yes.

Q. Does it show there was any inability to move his lower extremities at the time the interne examined him? [200]

A. It said he can readily move lower extremities, but marked limitation is present, and he concludes a lumbo-sacral pain.

Q. In other words, he can move them but it hurts to move them?

A. It says they are moved but limited.

Q. Limited due to pain?

A. He says limited due to pain.

Q. Now, X-rays were taken at the hospital, were they not? A. Yes, sir.

Q. And I believe you said that seven days after his admission a body cast was put on?

A. About that time. The chart would show when he went up there. His first X-rays were taken in bed. He was too sick to move out of his bed. And then we had further studies made when he was out

(Testimony of Rodney Yoell.)

of his shock. Then the cast was applied about a little over a week later. The cast was applied on 2/6/52.

Q. That would be about seven or eight days after he arrived? A. About that.

Q. And he wore that cast until what date? Does the record show?

A. He wore that cast until——

Q. I think if you will look at pages 19 and 20 you will find out—maybe page 19 was on the application of the cast.

A. February 6th he was taken up to the cast room.

Q. I think it was April 10th. Do you want to look on that [201] date and see if that does not——

A. The 17th, body cast removed.

Q. So the cast was removed April 10th?

A. Yes.

Q. Doctor, you stated that in your original findings, if I recall your testimony, there was some involvement of the kidney. A. Yes.

Q. Just what was that involvement?

A. Well, he had some blood in his urine and he had exquisite pain and tenderness and swelling around there, and muscle spasm, and I thought he had a rupture or partial rupture or tearing of the kidney and hemorrhage around the kidney.

Q. How long did he have blood in the urine?

A. It wasn't more than a couple of days. I saw him void and there was gross blood in the urine at the time. Then we had it checked in the laboratory,

(Testimony of Rodney Yoell.)

because if it continued you have to go in there and sew the kidney up. He was catheterized that night and a specimen sent to the laboratory. A test taken the following morning showed negative blood. So that bleeding had stopped.

Q. So the laboratory specimen that was sent to the laboratory did not reveal any blood in the urine, is that correct?

A. No. That is right.

Q. That test was taken, I think you said——

A. The urine was drawn at night. They had him catheterized. [202]

Q. The test was run the next day?

A. Probably the next morning.

Q. Other than that was there any subsequent evidence of blood in the urine? A. No.

Q. So that the kidney condition cleared up within a matter of two or three days, is that correct?

A. The actual bleeding, blood in the urine, certainly, it cleared up; but the hemorrhage around the kidney did not. That was a very painful thing.

Q. The black and blue area remained?

A. Yes, the swelling, the tenderness, the high white count and fever.

Q. But that cleared up in due course, did it not, Doctor? A. Yes, sir.

Q. So there was no residual evidence of injury to the kidney? A. No.

Q. You said there was some involvement of the liver. Did that also clear up in the course of time?

A. Yes.

(Testimony of Rodney Yoell.)

Q. So there is no permanent injury to the liver in any way? A. No, not in my opinion.

Q. Pardon?

A. I say I do not think there is, not in my opinion. I do [203] not find any evidence of it.

Q. You say he was put in traction?

A. Yes.

Q. That is prior to the application of the body cast?

A. That is right, and we upended the bed, put some sandbags around him, skeletal pull.

Q. Do the notes show how much of a pull was put in? A. No.

Q. Do the notes show any traction?

A. No, I don't see any here. But I know that he had traction because I put him in traction myself and made sure he was in the proper position. The position of the bed changed. His position in bed changed as well as his position in the bed. Sandbags were placed and pillows placed so there would be a stretch of the muscles.

Q. But there is no record of it, is that correct?

A. I do not see any here. It would probably be in there. In explanation of that, this man was sick at the time, and you do what you have to do. Sometimes we do not put down each exact thing that is done at that particular moment.

Q. You take care of the patient and let the nurses take care of the record?

A. You take care of the record yourself as much

(Testimony of Rodney Yoell.)

as you can, but at that time you know what you do for the man.

Q. You are sure in your own mind that you had him in [204] traction?

A. I didn't put him in Buck's extension. I put him in traction. In other words, I didn't hang any apparatus or splints on him. But you flex his knees. We have a tractor bed, lower on one side, and the weight of his own body stretches and pulls it back.

Q. Did you put him in hyperextension?

A. No, I didn't put him in hyperextension on account of the fractured vertebra, but I did bend his knees, hang his knees over in this position, you see, so there would be some pull when his body slid back, to try to take the pressure off the fractured hip joint, and he got a little straightening by the weight of his own body, would be sufficient.

Q. You mentioned fractures of the vertebra.

A. Yes, sir.

Q. What part of the vertebra was fractured?

A. The part called the transverse processes. Those are the lateral prominences, lateral flanges that stick out.

Q. They are the little bony protuberances?

A. That is right.

Q. How many were broken?

A. Four or five, I think.

Q. Did they heal without difficulty?

A. Yes, they did. There is one, I think, that did not unite, but the majority of them healed. At least

(Testimony of Rodney Yoell.)

there was no [205] residual disability as far as that was concerned.

Q. Insofar as the transverse processes are concerned, there is no permanent disability there?

A. No.

Q. Any pain in the area of the four transverse processes? A. Yes.

Q. Presently? A. Yes.

Q. What part of the body is involved?

A. The muscles—Doan's kidney pills have their ad, the hand is placed over the back like this. That is where the pain is, in the soft part of the back, between the last rib and the upper part of the hip bone.

Q. You say he complained of pain in that zone the last time you saw him? A. Yes.

Q. Do you have any note of that? A. Yes.

Q. Where have you noted the pain in that area?

A. "Tires in back easily."

Q. Tires in back easily?

A. Yes. This is my own shorthand.

Q. So you interpret the fact that he told you he tired in the back easily that he has pain in the back?

A. He had pain and soreness and some evidence of slight [206] muscle spasm there, yes, definitely. You see, those big muscles that attach the trunk to the pelvis come off as four fractured transverse processes, and a blow or injury that is sufficient to rip those loose naturally tears a lot of soft tissue with it. When you deal with a fracture, it is not

(Testimony of Rodney Yoell.)

only the bone that is involved, but quite often the bone will heal and the injury to the soft tissue, scar tissue, still remains, and you have a greater pain from soft tissue damage than you will have from the bony injury itself.

Q. Last Monday when you saw him did you see muscle spasm?

A. Yes, he had some pain from muscle spasm when he was bending forward on extreme motion.

Q. As he bent over all the way——

A. Yes.

Q. ——he told you it hurt him?

A. Yes, and you could see what we call muscle spasm. There is a little inequality there of tension of the two muscles. It was not much, but it was some.

Q. Did you note it any place in your records?

A. Probably it was on a disc on my dictagraph up there. These are sort of courtroom notes. It is not a complete record.

Q. Speaking of courtroom, when you examined him last week that was for the purpose of testifying at this trial, was it not? [207] A. Yes.

Q. You knew that the trial was coming up?

A. Yes, but who I was testifying for or what about I do not know yet.

Q. After you left the hospital, can you tell me the first time you saw him? I think it is on that yellow sheet, is it not, Doctor?

A. I saw him in June—4th, 18th; July 11th, 15th, 24th, 31st; September 4th, 7th; October 20th,

(Testimony of Rodney Yoell.)

29th; I saw him on November 1st; I saw him the 2nd of December. As he was gradually improving his visits got less frequent.

Q. After December 2nd, 1952, when is the next time you saw him?

A. The 17th of December, 1952.

Q. The next time?

A. The 30th of December.

Q. And the next time?

A. The 8th of January, 1953.

Q. And the next time?

A. February 10th, 1953.

Q. Was February 10th, 1953, the last time you saw him up until last Monday?

A. It probably was. That is the best of my recollection.

Q. Going back to your findings, the first time you saw him after he left the hospital June 4th, 1952, you have a note [208] there, "Improving"?

A. Yes, to report in 10 days.

Q. He came back in 10 days, and what is your note on the 18th?

A. Improving. States vision is poor. I received permission to send him to an eye specialist to check his vision.

Q. Did that complaint of his vision have anything to do with the injury that he received in the accident? A. I do not think so.

Q. You saw him on July 11th, and what is your report on that date?

A. I had a consultation with Dr. George Hos-

(Testimony of Rodney Yoell.)

ford about his findings. I secured permission to have his eyes examined and then I rechecked the X-rays.

Q. You also have a notation, "Improving," do you not? A. Yes, sir.

Q. On July 15th you have a notation, "Gradually getting off crutches," is that right?

A. Yes, sir.

Q. On July 24th the notation is, "Progress satisfactory"? A. Yes.

Q. On July 31 you have the notation, "Improved"? A. Yes, sir.

Q. On September 4th you have the notation, "Improving"? A. Yes, sir. [209]

Q. October 7th?

A. "Pain in right ankle and right knee on sitting rotation." I told him to stop wearing his cane.

Q. To discard his cane?

A. To discard his cane gradually.

Q. On October 20th, 1952, you have the notation, "Improving, to return in one week"?

A. That is right.

Q. On October 29th you have the notation, "Improved," is that right? A. Yes, sir.

Q. On November 1st you have the notation, "Improving"? A. Yes.

Q. And "Flexion o.k."?

A. That is right.

Q. What do you mean by "flexion," Doctor?

A. Forward bending satisfactory, forward flexion.

(Testimony of Rodney Yoell.)

Q. Then you have——

A. "Practically no limp."

Q. That was the notation, "Practically no limp'"? A. Yes.

Q. "And to return in 10 days"?

A. Yes, sir.

Q. On December 17th you have no notation.

A. No. [210]

Q. December 30th you have a notation, "Gradually improving." January 8th, 1953, you have a notation——

A. "Improved. Report in 10 days."

Q. When you saw him February, whatever that date is, in 1953, did you discharge him to go to work at that time?

A. I thought he could go to work in June 1953. That was my opinion as of December. I thought it would be six months before he would get back to work. Now, the reason I haven't got the full report here, that return to work as of such a specific date, that he was no longer under insurance care, and there was no report turned in after that. He was coming to see me, but at my last report, I thought it would take about six months. So I figured he would be able to get back to work some time in June, 1953.

Q. And you so reported, I believe, in December of 1952? A. Of 1952.

Q. Before we get to that, Doctor, this yellow sheet that I hold in my hand, that is the notes of the daily—not daily visits, but the times he came

(Testimony of Rodney Yoell.)

into your office? Are those your complete notes on those particular visits? A. Yes.

Mr. Taylor: We would like to offer those in evidence, Your Honor.

Mr. Gerhardt: No objection, Your Honor. We will ask that the report just referred to, from which the doctor [211] refreshed his recollection, also be offered. That is the December 2nd report.

(The notes of daily visits were thereupon received in evidence and marked Defendant's Exhibit B.)

Mr. Taylor: Let me ask him some questions about that report.

Q. Doctor, you have referred to a report dated December 13th, 1952, and that was a report to Mr. Lloyd E. McMurray, one of the attorneys for Mr. Williams, is that correct? A. Yes.

Q. And you have a yellow copy in your file. In this report you have listed the fractures that you found in your earlier studies of Mr. Williams, is that correct? A. That is correct.

Q. And I believe you said that insofar as the fracture of the right side of the pelvis, there was a moderate separation of the fragments?

A. That is correct.

Q. Did that fracture ultimately heal?

A. Yes. Wait a minute now. Will you please tell me which fracture we were referring to? There is one here—you have another X-ray report there?

Q. Here are two X-ray reports. Is that what you are looking for? [212] A. No, sir.

(Testimony of Rodney Yoell.)

Mr. Gerhardt: Are they in the St. Mary's Hospital records, Doctor?

Mr. Taylor: The reports in evidence do not contain X-ray findings, Your Honor.

The Witness: Are you asking, sir, with respect to which?

Mr. Taylor: Q. I am asking you with respect to item No. 1 on your report.

A. "Right side with moderate separation of the fragments. He sustained the following injuries."

Q. My question is this: As to that fracture on the right side of the pelvis, did it ultimately fill in with callous?

A. The 4/10 X-rays show it had not.

Q. You have later made reports on that, haven't you, Doctor?

A. I am trying to follow them in sequence. The reason I am hesitating, there was one that was very slow to heal. It says the fracture referred to there, that I am referring to in item 1 on the 4th, showed beginning of healing—that was on the 10th of April —and then on May 12th there was a minimal amount of callous. The healing was progressing. No change of the fragments. Callous is not abundant, beginning to form. That is all the fractures.

And then the next examination shows a fractured neck of the femur, old healed fracture by the pubis. "Ununited fracture [213] of the tuberosity on the right side that overrode a deformity." That was in July. This is September. "Old healed fracture of

(Testimony of Rodney Yoell.)

the neck of the right femur." So as late as September one fracture had not healed.

Q. As late as September 1952?

A. Yes, sir.

Q. Were there any checkup X-rays on that particular fracture?

A. No, I think that was the last. It seems to me some of the X-ray records are not here.

Q. I call your attention to the paragraph in the letter of December 15th which says, "Fractures were treated and healing has been satisfactory."

A. Yes.

Q. Would that indicate that there had been a filling-in of these fractured areas?

A. So that by December 12th, 1952, there had been healing of the fractures?

A. That is right, with the exception of one. One fracture apparently had not healed.

Q. Does it say so in this report?

A. Not in this one.

Q. I believe you stated that one of them showed there was an overriding fragment, which you said would be permanent, in your direct testimony.

A. Yes. [214]

Q. Can you tell me the degree of overriding?

A. I have the pictures. I could show it to you. It was my impression it was about ¾ inch overriding.

Q. That is an overlapping?

A. It is an overlapping about like that.

Q. But there was union? A. Yes.

(Testimony of Rodney Yoell.)

Q. Was that a firm union? A. I think so.

Q. So there wouldn't be any rubbing back and forth in the area?

A. No, not of the fracture line, but it would tilt the pelvis. It would tilt the hip.

Q. Did you make any measurements of Mr. Williams to determine whether or not there is any shortening of either side or any tilt of the hip joints?

A. He has no shortening of his legs. He had no shortening of his legs, but there is a demonstrable tilt in the access of the two hip joints.

Q. Pardon me?

A. There is a demonstrable——

Q. Do you have any notes on that that shows the amount?

A. Not X-ray pictures. At least I hadn't them. He has a difference between his right and his left socket and a [215] deformity of the head of the femur from the fracture there. If I can see the X-ray pictures, I can show it to you.

Q. I don't have the X-ray picture. What is this notation on the face of Defendant's Exhibit A, "Normal shape"?

A. "Motions o.k. and normal shape."

Q. What part of his body were you talking about when you said it was a normal shape?

A. Talking about the trunk on the pelvis, the torso on the pelvis as he stands.

Q. So that as he stands with his back in a nor-

(Testimony of Rodney Yoell.)

mal shape there wouldn't be any tilting, would there, Doctor?

A. Not of his spine, not of the transverse processes, not of the spine and the pelvis. In other words, the bones of his vertebra stood on his pelvis all right, but it is his pelvis that is twisted.

Q. When you saw him this week, June 6, 1955, was there any evidence of any limp?

A. Slight limp.

Q. Do you have it marked any place?

A. No, no, I know I have it on the disc. By the disc I mean the soundscriber. I have a soundscriber and I talk into it and listen to it.

Q. In your report of December 15th—and that is December 15th, 1952—you said he walked with a limp but it isn't marked. You mean by that it is hardly noticeable?

A. I would call it a slight limp.

Q. A very slight limp?

A. Slight. Now, I would call it very slight. [216]

Q. In other words, there has been an improvement since December 19th, 1952? A. Oh, yes.

Q. Do you know when Mr. Williams returned to work? A. No.

Q. I think you referred to it before; in your letter you thought it would be about six months after December 1952? A. Yes.

Q. When he came in this week he told you he had been working as a stevedore, did he not?

A. Yes.

(Testimony of Rodney Yoell.)

Q. You had never seen Robert Williams as a patient prior to the date of his injury, had you?

A. No.

Q. So you do not know whether he had a limp prior to that time, do you? A. No.

Q. You do not know whether he was a person who moved slowly or rapidly before the accident, do you?

A. I imagine he was pretty active.

Q. You do not know that, though, do you, Dr.?

A. I would say he was a quick mover. I can't conceive of a man who has built a physique being slow, lethargic or hesitant in his motions. He is a pretty heavily muscled, well developed man. Of course, that is an opinion. [217]

Q. You had him bend over last Wednesday?

A. Yes.

Q. He could touch the floor?

A. Yes, he could get down and touch his fingertips, bring them down to the floor. But the last six inches was somewhat painful, slower, and some evidence of muscle spasm, in touching.

Q. But he could touch the floor?

A. He could touch the floor.

Q. Did he have any limitation of motion last Monday when you saw him?

A. Yes, I considered that last six inches a limitation of motion. In other words, he gets down to the point where he stretches the muscle and then there is a moderate amount of pain. Of course, pain is an interpretative thing. It gets down to where his

(Testimony of Rodney Yoell.)

back would hurt him. It would slow him down. He could get down there. It wasn't a fixation.

Q. It was not a true limitation in that he could not go any further?

A. No, he could touch the floor.

Q. He told you it hurt when he was doing the last six inches? A. About the last six inches.

Q. That is a subjective complaint?

A. Yes, but he had muscle spasm with it, which is objective.

Q. Any other objective findings with reference to the [218] injuries that Mr. Williams received, when you examined him last Monday?

A. Yes, he had pain in his right hip on extreme abduction and on extreme flexion and on extreme extension.

Q. Could he flex his right hip?

A. Almost completely.

Q. There was no limitation of motion of flexion of the right hip, was there? A. Slight.

Q. By slight you mean very little, is that right?

A. Very little.

Q. How about the abduction?

A. Abduction was moderately limited.

Q. Could you tell me in figures or amount?

A. I would say it was cut down by 8 to 10 degrees.

Q. And the extension of his hip, did he have full extension?

A. He had a little limitation of backward extension.

Q. Very slight limitation of extension?

(Testimony of Rodney Yoell.)

A. Slight.

Q. Those were objective findings?

A. Yes, sir.

Q. Are there any other objective findings besides this motion of his hip and the bending over motion, touching the floor?

A. Except for every limp that you would catch if you were [219] looking for it, no.

Q. Then that would be all the objective findings?

A. All the objective findings. Physical examination. I have had no X-rays made.

Q. This nerve damage that you refer to is something that has cleared up so far as you can tell?

A. I think it has cleared entirely.

Q. Did you prescribe any treatment when you saw him on June 6th? A. Yes.

Q. What?

A. I told him after he got through work to take a good warm tub bath and once in a while take some Alkaseltzer to relieve his soreness.

Q. Anything else? A. No.

Q. You did not recommend any physiotherapy or anything like that?

A. No, I didn't think it necessary.

Q. Did he tell you how long he worked before his back hurt?

A. He told me it depended on the type of work that he was doing. He said if he were jitney driving he got along pretty well but he would have to get out of the seat after three or four hours. He said he couldn't do a full shift without getting out to get

(Testimony of Rodney Yoell.)

a rest, but in lifting, or that sort of [220] shoving or pushing where it was heavy, would tire him out rather quickly.

Q. My question is how long a period of time did he do those things?

A. He said it took him, it began to get him towards the end of his work. He would work about five or six hours, quite a while, and after that it would begin to bother him, and if he goes to a movie and sits in a theater for a couple of hours or an hour and a half or so, his back hurts him a little bit.

Q. These jitneys that you speak of, are those the little machines that run around the docks?

A. Yes.

Q. They have lifts on the front of them?

A. They have fork lifts. Some of them have derricks. They have a seat that is like the seat on a John Deere Harvester. Some of them have flat seats, but those have little basket seats.

Q. Those things bounce along the tracks?

A. Yes, they pick cargo up. Some have a lever that works this way. Some have almost an automatic shift. There is quite a nepotism among the foremen as to who drives which.

Q. This traumatic arthritis that you mentioned in your testimony, is there any evidence now that he has any traumatic arthritis?

A. Well, there was evidence when the last X-rays were taken, [221] which is still present, in all probability. I have not rechecked them, but I have never known of any cases where the hip socket was

(Testimony of Rodney Yoell.)

smashed in like that and then healed, where there was final absorption, although it might occur.

Q. Is there any evidence at the present time that he is suffering from traumatic arthritis?

A. I think the pain in his hip is due partially to arthritis and partially to scar tissue in the muscle, and I think the pain in his back after lifting or sitting or climbing a great period of time is somewhat due to arthritis. It is pretty hard to separate which is due to the arthritis and which is due to the muscle spasm.

Mr. Gerhardt: In view of the doctor's testimony, Your Honor, I do not intend to use these X-rays, if Mr. Taylor would like to use them——

Mr. Taylor: I have no desire to, thank you.

Q. Does he have pain in his hip at the present time?

A. Yes, he says his hip hurts him and his back hurts him after he has worked for a while and used it, and the heavier the work, the more quickly the pain comes on. It does not bother him so much when he is doing comparatively light work, but in bed it wakes him up at night. If he lies on that side too long he has to shift his position, and also sitting in a movie or sitting in a hard seat, after about an hour or so he shifts. It bothers him. [222]

The Court: Does that have to do with the circulation?

A. I do not think, Your Honor, it would be the circulation. You can't disturb the circulation of the hip in sitting. I think it is due to muscle stretching

(Testimony of Rodney Yoell.)

and pulling at an angle that it is not intended to pull. In other words, the muscles, when a man sits normally he can sit squarely on both cheeks of his buttock. He has cushions there to protect him. If he has a little tilt, the angle of the bone which you sit on is definitely fractured, there is a deviation there, and that puts a stretch on the muscle and it would tire more easily. It is a strained position.

The Court: Q. What is your thought in relation to a bed patient and the necessity of getting him out of bed and around? What does that do?

A. The quicker you can get motion into joints the better it is.

Q. That has no relation to the circulation at all.

A. Oh, yes, the circulation has to improve, but I thought you meant would this pain be due to a stoppage of circulation, such as if you put an arm over a bench, cutting off the circulation.

Mr. Taylor: Q. This pain that you describe, did I understand you correctly that is because of muscle pulling? A. Yes, a muscle staying in a——

Q. Cramped position?

A. Yes, sir. I can explain it. Take any normal group of [223] motions. You have a normal rotation of the hand. You can turn your hand like that. If you get a fracture of the wrist, which is a common fracture, particularly in the center, you fall on the hand like that, one of the results is a stiff wrist, and your motion is limited, and if you go beyond that or you use that, the muscle which normally allows you to complete that motion has been torn

(Testimony of Rodney Yoell.)

and ruptured, there is scar tissue and it is sore. It is just as if you bent your thumb back beyond the normal range of motion. That is the probable explanation of some of this muscle pain and joint pain after fracture. It is not entirely clear, but it is found in cases that have no relation to injury whatsoever.

Q. That is not arthritis, is it, Doctor?

A. No, arthritis is an inflammation of the joint, a pathology, an inflammation of the joint, the joint surface.

Q. Arthritic changes are shown in the joint?

A. Arthritic changes are shown in the joint.

Q. Roentgenologists generally report arthritic changes in the joints when they make their reports, don't they? A. If there is arthritis there.

Q. That would be one of their findings?

A. That would be one of their findings.

Q. In any of the X-ray reports that you have is there any evidence of any arthritis? You may look at them if you wish.

A. Yes. I know myself, because you can see the hip socket [224] pretty badly smashed and bone crowded down into it. That is a traumatic arthritis. You can see it. You do not have to have a report on it. It is there.

Q. But it is in none of these reports, is it, Doctor?

A. No, but it is in his hip. It is his hip that hurts him, not the report.

Q. I appreciate that, but it would seem if there

(Testimony of Rodney Yoell.)

was any arthritis, it would be in the report, wouldn't it?

A. Not necessarily, no. The roentgenologist—some put things in, some leave them out. No doctor is infallible, surgeons or anybody else. It is not an exact science by a long shot. But I can show you or anyone that that hip joint, especially the right, was pretty badly banged up, and he has a shortening of the neck of the femur, and he has a rather bad head of the bone there.

Q. Whether it is banged up or not, at the present time he has very good motion of it except for the slight limitations that you have mentioned?

A. Yes, that is right. Yes, he has a good functional hip.

Q. It is a good usable hip?

A. It is a good usable hip within limitations.

Q. Within the limitations that you have mentioned? A. yes, sir.

Mr. Taylor: No further questions. [225]

Mr. Gerhardt: If your Honor please, I only wish to have introduced into evidence the report of December 12, 1952, that the doctor used to refresh his recollection from.

Mr. Taylor: May I see it?

Mr. Gerhardt: That is the one you referred to, counsel.

Mr. Taylor: Yes.

Redirect Examination

Q. (By Mr. Gerhardt): By the way, doctor, I

(Testimony of Rodney Yoell.)

notice attached to that report is a bill which was rendered subsequently, and you have the original here, which is already introduced into evidence as Plaintiffs Exhibit 15, and it is marked, your bill being in the amount of $260, December 15, 1952, to Mr. Robert Williams, and it is marked "Paid. 1/16/53." Does that refresh your recollection that you did make a charge after the compensation payments were cut off? This is the one that is in evidence already, doctor, Plaintiff's Exhibit 15; this is the one to Robert Williams from your office, and which is marked "Paid 1/16/53."

A. Apparently the secretary sent him a bill, which is paid, which I didn't recall.

Mr. Gerhardt: If your Honor please, I have asked that the report of December 15, 1952, which was used by the doctor to refresh his recollection, be admitted in evidence.

The Court: It may be admitted and marked next in order.

(The report referred to was thereupon received in evidence and marked Plaintiff's Exhibit 23.) [226]

Mr. Gerhardt: No further questions.

Recross Examination

Q. (By Mr. Taylor): Doctor, you are employed by the American President Lines as a physician, are you not? A. I am Chief Surgeon, yes.

Q. Are you on a salary?

A. Yes, a retainer.

(Testimony of Rodney Yoell.)

Q. A retainer? A. Yes.

Q. How long have you been connected with American President Lines as a physician?

A. Ever since it has been the American President Lines.

Q. And that was when?

A. I think in 1933 or 1934, maybe a little later than that. Mr. Walker is here. He could tell you.

Mr. Taylor: Thank you, doctor.

CHARLES M. HAID, JR.

was recalled as a witness, and having been previously duly sworn, testified as follows:

Mr. Gerhardt: I have only a few questions for Mr. Haid, your Honor. In view of the time involved in this matter and to save counsel's and the Court's time, I am not going into the services that were rendered by Mr. Haid as demonstrated by the next to the last exhibit, which was a bill of $5,000. I think, your Honor, rather than to go into all of that, and in [227] view of the testimony that has already been given, we will leave the matter entirely to the discretion of the Court, and I will ask for the withdrawal of Plaintiff's exhibit Number 22 and not offer any further proof at all of the services that were performed in the defense of the case. Is that agreeable?

Mr. Taylor: Surely.

Direct Examination—(Continued)

By Mr. Gerhardt: Q. Mr. Haid, you have listened to Dr. Yoell's testimony here today?

(Testimony of Charles M. Haid, Jr.)

A. Yes.

Q. Were you given a copy of that report of his of December 15, 1952 that has just been introduced in evidence? Let me show you that report.

A. Yes, I was, Mr. Gerhardt.

Q. Is that the one that you referred to this morning as being the report that you had?

A. Yes.

Q. Can you tell me whether you took into consideration the factors that were outlined in this report?

A. Yes, I did. I might add in that regard, Mr. Gerhardt, I have known Dr. Yoell, I have received reports from him for many years in connection with accidents where he examined injured seamen or stevedores, and my own impression was that Dr. Yoell was always very conservative. In other words, he was optimistic as to the chances of recovery, and I took that [228] into consideration, too.

Q. Mr. Haid, during Dr. Yoell's examination, there was introduced into evidence a notice from John Black's office——

A. I believe I know what you are referring to.

Q. You were in court and heard the testimony. There was a notice from John Black's office to Dr. Yoell, and written on behalf of the Fireman's Fund Indemnity Company, who were acting as the insurance carriers for Marine Terminals, to stop compensation. A. Yes.

Q. Prior to the conclusion of the settlement in this case did you have any discussion with Mr.

(Testimony of Charles M. Haid, Jr.)

Black's office pertaining to the settlement of this case? A. I did.

Q. Do you recall about when that was?

A. My best recollection is it was shortly after some rather extensive negotiations with Mr. McMurray and Mr. Andersen about the middle of December, 1952. I was well aware and had been advised, initially through the Marine Terminals report of the injury that Fireman's Fund was the compensation carrier, and knowing, of course, that Mr. Black was the attorney for the Fireman's Fund in these matters—and I believe also that we had quite early established that Mr. Black was being furnished copies of the reports from time to time from Dr. Yoell concerning the examination of Mr. Williams for his use [229] and benefit in connection with the compensation payments—so I therefore contacted Mr. Black on behalf of the Fireman's Fund, the compensation carrier, and of course, Marine Terminals Corporation to recall to his recollection the fact that Mr. Williams had filed his notice of election to sue American President Lines and that the suit had been filed, and so forth, and that the matter had been—I had taken Mr. Williams' deposition and investigated the case, and so forth, and that we were—I was now in a position of either having to go to trial or settle the case within, oh, a month or five weeks, something of that sort, and called to his attention the fact that it appeared from my investigation and what not, the legal research, that the liability was that of

(Testimony of Charles M. Haid, Jr.)

Marine Terminals Corporation rather than that of American President Lines, and discussed at some length with him the matter of the right of indemnity over.

Q. Did you discuss with him the amount of the settlement?

A. Oh, yes, I did. I called to his attention the fact that our settlement negotiations had been going on and the amounts involved and what the flat minimum demand was of Williams' attorneys.

Q. Did you advise him with respect to the amount that was paid, that you were going to pay in settlement of this case or the amount that you thought you might pay?

A. My recollection of that is that we thought that—as of [230] about the middle of December or thereabouts I advised him I had received this flat minimum demand of $75,000, but that I was continuing—I was hopeful that through further negotiations I would be able to reduce that amount, and Mr. Black advised—I had several telephone discussions with him at one time or another and I believe I saw him in his office, and he stated to me that he was giving the matter of legal liability, of settlement and so forth, and negotiations, his active attention.

I got right down to the wire with regard to the trial date on January 16th, 1953, and not having received any answer from Mr. Black for, oh, a week or so as to what it was that he was doing or what his views were, I finally concluded the settle-

(Testimony of Charles M. Haid, Jr.)
ment to the best of my ability at that time with Williams and his attorney.

Mr. Gerhardt: Thank you. That is all.

(A recess was taken to 10:00 a.m. Friday, June 10, 1955.) [231]

The Clerk: American President Lines vs. Marine Terminals Corporation, further trial.

CHARLES M. HAID, JR.

a witness called on behalf of the plaintiff, was recalled and having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination

Q. (By Mr. Taylor): Mr. Haid, did you handle the pleadings in the case of Robert Williams against APL? A. Yes, for the defense.

Q. For the defense? A. Yes.

Q. Did you set up an answer? A. Yes.

Q. In the answer did you deny negligence on the part of APL?

A. I believe I did, yes. I have not looked at the answer, Mr. Taylor, recently, but if negligence had been alleged, and I believe that it was, I did deny it.

Q. Did you deny unseaworthiness?

A. Yes. You can't very well concede those things, Mr. Taylor.

Q. Did you set up the defense of contributory negligence? A. I believe I did.

Q. Did you set up any other special defenses, Mr. Haid? [232]

(Testimony of Charles M. Haid, Jr.)

A. As I recall it, Mr. Taylor, I did set up a special defense to the effect that the negligence and the unseaworthiness, if any, was caused by Marine Terminals Corporation, in an effort to take advantage of the various decisions in the Circuit Courts to the effect that, as the law was then, where a stevedoring company takes control over an area and causes something, the liability then is not that of the steamship company but rather that of the stevedoring company.

Q. These pleadings were filed in the State court?

A. Yes.

Q. Did you file a cross-complaint in the State court against the Marine Terminals?

A. There is no provision for that in the State court, Mr. Taylor.

Q. Did you file any type of pleadings to intervene Marine Terminals in the State court action?

A. No, I did not. There is no provision in the law of the State of California for interpleader in that manner.

Q. What facts did you have at your disposal as the basis for the denial of unseaworthiness?

A. Really none, to tell you the truth, Mr. Taylor. As I received advices, received the file, such as there was with respect to the accident, it appeared to me the liability with respect to unseaworthiness was quite clear, but I was certainly not going to concede that in the pleading stage and have [233] somebody take a judgment based upon the pleadings.

(Testimony of Charles M. Haid, Jr.)

Q. Was there an investigation made and was that investigation available to you when you filed your answer in the State court?

A. I believe so.

Q. You filed your answer after reviewing the investigation that had been made up to that time?

A. Yes.

Q. Did you make any motions to strike any portion of the complaint filed by Robert Williams?

A. No.

Q. Was there any attempt made to transfer the State court action to the Federal court?

A. As of the time that the file was referred to me for defense the statutory time within which transfer could have been accomplished under the Federal Rules of Procedure had expired; so I was in no position to do so, when I received the complaint, so I did not make a motion to transfer because I was time barred.

Q. Did you notify the Marine Terminals, or did your office notify Marine Terminals that the Williams vs. American President Lines complaint had been filed? A. In writing or orally?

Q. In any way.

A. I do not believe I did so immediately after receiving the complaint, but I know that I did later on orally. [234]

Q. When was that that you first notified the Marine Terminals of the filing of the Williams suit?

A. That was, to the best of my recollection, during December 1952, and I did not notify Marine

(Testimony of Charles M. Haid, Jr.)

Terminals Corporation as such, but, rather, John Black, attorney for the underwriter for Marine Terminals.

Q. So that your best recollection and your testimony is that you at no time notified Marine Terminals directly with reference to the filing of the Williams suit?

A. I believe that is correct.

Q. Did you or anyone in your office ever make a demand upon the Marine Terminals to defend the action of Williams against American President Lines?

Mr. Gerhardt: We have stipulated, I believe, your Honor, that we did not. Isn't that correct, Mr. Taylor? A direct demand to defend?

Mr. Taylor: Yes——

Mr. Gerhardt: Let the witness go ahead and answer.

The Witness: No, I made no direct demand upon Marine Terminals as such.

Mr. Taylor: Q. That is a demand to take over the defense of the American President Lines?

A. That is right.

Q. So we understand each other.

A. Yes. But that was, however, among the subjects of the [235] conversation later on with Mr. Black.

Q. Did you give Marine Terminals any notice of the settlement that was going to be made?

A. Through their attorney, Mr. Black, I did.

Q. You gave a notice to Mr. John Black?

(Testimony of Charles M. Haid, Jr.)

A. Yes.

Q. Was that in writing or was that verbally?

A. That was verbal.

Q. When was your first verbal information to Mr. John Black given with reference to the notice of settlement?

A. About the middle of December, 1952. When I say about the middle—around about that time.

Q. How was that information conveyed to Mr. Black?

A. My best recollection at the present time is, Mr. Taylor, since I had occasion to discuss various things with Mr. Black on other cases from time to time, either in person or over the phone, I think the first time that I notified Mr. Black about this situation was probably over the phone.

Q. You recall it was a telephone conversation?

A. Yes.

Q. Did you ever follow that up with any letter to him? A. No, I did not.

Q. Is there any correspondence between your office and Mr. Black's office concerning the settlement of Marine Terminals? A. No. [236]

Q. The settlement of the Williams case?

A. No.

Q. In this first telephone conversation that you had with Mr. Black, which you believe was about the middle of December 1952, what did you tell him and what did he say to you about it?

A. Well, it is pretty hard to remember exactly what was discussed, because we had more than one

(Testimony of Charles M. Haid, Jr.)

discussion about the entire matter. But my best recollection is that I advised him of the pendency of the Williams case against the American President Lines, discussed with him some of the facts of the matter, as to the liability of American President Lines, and I also believe—and I see no reason to believe otherwise—that we discussed generally the nature and extent of Mr. Williams' injuries, because I had been advised that copies of Dr. Yoell's reports had been forwarded to Mr. Black's office from time to time, because they were the attorneys for the underwriters in the case.

It is also my recollection that I discussed with him the fact that the plaintiff's attorneys had initiated settlement discussions with me concerning the case as such.

Q. Did you tell him what the demand was?

A. I believe I did.

Q. What did you tell him in that regard?

A. I believe I told him exactly what they told me. [237]

Q. And that was what?

A. That their initial demand was $90,000, and that they had finally come down, after considerable bickering back and forth between themselves and myself, to a flat minimum of $75,000.

Q. Did you have more than one conversation with Mr. Black on this subject of settlement?

A. Yes, I did, Mr. Taylor. I can recall that. And, oh, I might mention to you also that Mr. Black and I discussed the problem of indemnity—

(Testimony of Charles M. Haid, Jr.)

that subject between American President Lines and Marine Terminals Corporation.

Q. Was that discussion regarding indemnity before or after the release had been taken?

A. Before.

Q. What was the tenor of your discussion in that regard?

A. Expressing my own thoughts with respect to the liability of Marine Terminals Corporation to indemnify American President Lines in respect to any verdict or settlement that might be reached, and Mr. Black's denial that there was any such right, and so forth—you know, the usual conversations that attorneys carry out among themselves.

Q. You were trying to argue for indemnity over? A. Yes.

Q. And he was arguing against it, is that right?

A. Yes, that is right.

Q. Was it your belief at that time that the sole liability in [238] the Williams case lay with the Marine Terminals? A. Yes, it was.

Q. What was the basis for that belief?

A. Because of the fact that, as the investigation of the case had developed the facts themselves, the problem of the missing safety lock, among other things, on that hatch beam was a matter that was known to Marine Terminals Corporation employees and, accordingly, the Marine Terminals Corporation, but was not known to American President Lines; but notwithstanding the knowledge of Marine Terminals Corporation, it went ahead and

(Testimony of Charles M. Haid, Jr.)

worked its men in the lower hold and the inevitable happened, just what the lock was designed to prevent, falling in the hold.

Q. You mention the absence of the lock, among other things. What other things did you take into consideration?

A. I do not quite follow you in that regard—all of the various facts that were developed as to the knowledge of the various stevedores. Is that what you are concerned with?

Q. I am just rephrasing part of your answer, as I understood it, that it was the absence of the lock among other things that led you to believe that the sole liability was with Marine Terminals.

Mr. Gerhardt: What do you mean by "sole," counsel?

Mr. Taylor: That is what I asked him, if he believed the sole liability was with Marine Terminals, and he purported [239] to answer.

The Witness: I am sorry, Mr. Taylor. Perhaps I did not follow the entire question. It was my opinion at the time—and of course it still is—that the American President Lines was definitely liable as such to the injured man because of the unseaworthy condition of the vessel through that missing lock on the beam, but that under the circumstances of the facts as they were developed, that the primary liability in the case rested with Marine Terminals Corporation.

The Court: Counsel, so that I may follow this testimony, what is the purpose of the testimony?

(Testimony of Charles M. Haid, Jr.)

Mr. Taylor: Leading up to the basis for the settlement, your Honor, that was made with Mr. Williams.

The Court: With what result?

Mr. Taylor: It is our contention, your Honor, if the plaintiff in this suit believed that there was sole liability on the part of Marine Terminals, then they would have won the first lawsuit. The first lawsuit would have resulted in a defense verdict, and that any payment that was made was a donation or gratuity if they believed that. If they did not believe that there was sole liability, then I am interrogating him as to what they believed the liability was as a basis for the payment that was made, the settlement in the first suit.

The Court: Are there any of the cases that you have read [240] that has any relation to the proposition that you just presented to this Court? What cases, if any, could you suggest to the Court?

Mr. Taylor: Your Honor, it would appear that if there was a sole liability on the part of the Marine Terminals, and the ship company was not liable at all, then the liability of Marine Terminals would fall under the Longshoremen and Harbor Workers Act, because it was the Marine Terminals' employee who was injured, and there would not be, could be no recovery in a civil suit.

Mr. Gerhardt: If your Honor please, one of the stipulations in this case is that the vessel was unseaworthy because that lock on the beam was missing.

(Testimony of Charles M. Haid, Jr.)

Mr. Taylor: We are not prepared to stipulate that it was unseaworthy.

The Court: You have already done so.

Mr. Taylor: No, I think that is counsel's statement that it was unseaworthy. I do not know that we are forced to accept a position that it was unseaworthy.

Mr. Gerhardt: I do not know of any case that holds where a lock is missing that the vessel is seaworthy. I think all the cases hold that.

Mr. Taylor: I think we are getting into an argument of the case.

The Court: I was trying to follow the testimony. You [241] may proceed.

The Witness: Mr. Taylor, if there is any question in your mind as to the use of my words here this morning, if I said, "sole liability on the part of Marine Terminals," what I was endeavoring to convey to you was primary liability upon Marine Terminals and initial liability on the part of American President Lines to Williams for the unseaworthy condition, and then the problem of liability over between the shipowner and Marine Terminals—that is the question where primary, sole, and all that business, comes in.

Mr. Taylor: Q. Those words all have legal meanings, of course. A. That is right.

Q. But I am directing my questions to your testimony that the liability was that of the Marine Terminals rather than that of the American President Lines.

(Testimony of Charles M. Haid, Jr.)

A. Well, the American President Lines in this instance, I believe, was liable to Mr. Williams without fault. In other words, there was an absolute liability for the unseaworthy condition.

Q. Did you make a demand to Mr. Black that he contribute to the settlement that you proposed to make?

A. My best recollection about that, Mr. Taylor, is that I apprised him of the various things that I mentioned before I advised him of my views with regard to what the jury verdict [242] in the State court might be and what the flat settlement demand was by Williams' attorneys, and we talked back and forth about indemnity and various such things, and Mr. Black advised me that he would give the matter his very active consideration as to the question of contribution towards the settlement that might be worked out or just what his position would be under the circumstances.

Q. But did you definitely ask him to contribute?

A. Yes, I did, but I do not recall that any particular amount was mentioned.

Q. But you did ask him to make a contribution?

A. Yes.

Q. Settlement was effected with a release dated January 16, 1953? A. Yes.

Q. Is that correct? A. That is right.

Q. Can you tell me when you started negotiating with the attorney for Mr. Williams?

A. To my best recollection, it was sometime after the taking of Mr. Williams' deposition during

(Testimony of Charles M. Haid, Jr.)

October of 1952, and probably during the early part of December, 1952, that they made a formal settlement—that they started settlement negotiations.

Q. With whom did you negotiate, Mr. McMurray or Mr. Andersen?

A. Initially with Mr. McMurray and thereafter with both Mr. [243] McMurray and Mr. Andersen.

Q. Approximately how many settlement discussions did you have with the attorneys for Mr. Williams?

A. Oh, I would say there were several during December, several more during January, and getting towards the time when the case was set for trial, January 16th, 1953, we had virtually continuous negotiations over a period of several days.

Q. Did you go to their office, or did they come to your office?

A. Oh, I would be in their office on one occasion, they would be in my office on another occasion, and then I would be back over there again.

Q. Would you give me a rough number of how many times you met with them to discuss the Williams case?

A. Oh, I would say four or five times.

The Court: Does this testimony have to do with the $5,000 fee?

Mr. Taylor: Just leading up to the time that was spent in negotiating. It is my understanding the $5,000 figure has been withdrawn, but it is being left up to your Honor as to what fee should be allowed. I am directing my questions to that.

(Testimony of Charles M. Haid, Jr.)

Q. Could you tell me how many hours you spent in negotiating the settlement?

A. It is hard to tell really, but I would believe that I had [244] initial discussions in December that last four or five hours on various occasions; I mean a total of four or five hours during December, and that during January it ran more than that.

Q. How many hours in January would you say, your best estimate?

A. Oh, about five, six, seven or eight, something like that.

Q. Six to eight hours in January?

A. Yes.

Q. You have been engaged in defense work, as I take it, for a considerable period of time?

A. Yes.

Q. Is your arrangement on a time basis?

A. What arrangement?

Q. Is your fee arrangement with your client on a time basis?

A. Not in all respects, no.

Q. You bill them for the time? You take that into consideration in arriving at your bill?

A. Oh, yes. The time is taken into consideration, but there are other factors in each case, as you well know.

Q. Now, you took one deposition, I believe?

A. That is correct.

Q. That took two or three hours, is that right?

A. Yes.

(Testimony of Charles M. Haid, Jr.)

Q. Did you make any court apppearances in the Superior Court?

A. I do not believe that we had any formal court appearances [245] as such before any of the judges of the Superior Court on any matter. The various times when we were concerned with pleadings or extensions of the trial date, for example, we would handle that by means of a stipulation and discuss it with the Clerk of the Superior Court.

Q. You testified the payment of $62,500 was made to plaintiff in settlement of this case?

A. Yes, that is correct.

Q. And one of the factors that you took into consideration was his wage loss. What were his earnings, Mr. Haid?

A. Approximately $400 per month. That is to the best of my recollection now.

Q. I appreciate it has been several years. Just to refresh your memory from the deposition, you asked him how much he was earning, did you not?

A. Yes.

Q. And his reply in the deposition?

A. $85 a week. That is what the deposition says, yes.

Q. And that is the figure that you were using in estimating his wage loss? A. Yes.

Q. The information that you had in the deposition, is that right?

A. I believe that I took an opportunity to check that with Pacific Maritime Association. I mean that would be the normal thing that I would do. I be-

(Testimony of Charles M. Haid, Jr.)

lieve that was done. I just don't [246] recall exactly, but that is an invariable practice that I have.

Q. I believe you said that you considered eighteen months off work, is that right? A. Yes.

Q. You mentioned a compensation lien.

A. That is correct.

Q. Did the Fireman's Fund or Mr. Black's office put you on notice of the compensation lien?

A. Verbally.

Q. Verbally?

A. In my discussions with Mr. Black I believe he mentioned that particular amount, about $2,000.

Q. But you were not put on notice by lien form or anything? A. No.

Q. You did not pay any lien in addition to this $2,000? A. I did not.

Q. So this $62,000 was your gross payment?

A. Gross.

Q. I believe that you said that you observed Mr. Williams at the time of this deposition, and I believe you said that he was nervous. A. Yes.

Q. And that a recess was taken during the deposition.

A. On several occasions that I recall, that did occur. Mr. Taylor, when I say "recess," I mean not a formal recess where [247] everybody would adjourn for the outer chambers for a drink of water, but to let Mr. Williams get up and walk around the room for a few minutes.

Q. You say it was or was not that type of recess?

(Testimony of Charles M. Haid, Jr.)

A. That type of recess, and let him stretch his legs between answering one question and——

Q. Did he complain of nervousness in his deposition? A. I believe that he did.

Q. Have you had a chance to review this deposition?

A. No, I have not. I have not seen that deposition for a long time.

Q. Can you point out in it where he complained of nervousness? Frankly, Mr. Haid, I couldn't find it, but it might be in there.

A. Mr. Taylor, if you can't find it, I'm going to have to ask Mr. Gerhardt whether he can find it, because rather than take up the Court's time pawing through the record—what is the situation?

Mr. Gerhardt: I would suggest that we let the deposition go in evidence and speak for itself.

Mr. Taylor: There are some legal objections to some of the portions of the deposition.

The Court: The deposition is here. Either side may use it for any purpose.

The Witness: I am not declining to answer the question, [248] Mr. Taylor. There are 43 pages of stuff there.

Mr. Taylor: Q. Did he tell you how his back felt?

A. I believe he complained about the condition of his back, yes.

Q. What did he say about how his back felt?

A. He said it hurt him. I am just going on

(Testimony of Charles M. Haid, Jr.)

recollection, I mean, but I can recall that he complained about that.

Q. Did you ask him how his back felt at the place where the vertebras were broken?

The Court: If you have it in the deposition, read it to him.

The Witness: Yes, if it is in there, Mr. Taylor —I just can't recall everything that is in every deposition that I took, especially one I took in October, 1952, because there has been a multitude of depositions since. I just can't remember.

Mr. Taylor: Q. I can appreciate you have taken a lot of depositions, but yesterday on the stand you testified as to the factors you took into consideration in settling this case.

A. Yes, that is right, Mr. Taylor, but I did not say I based those factors completely on the matters that were set forth in the man's deposition.

Q. Do you recall what he said when you asked him how his back felt where the vertebrae were broken?

A. I can't recall that, Mr. Taylor, now. [249]

Q. I will ask you with reference to the question, "How does your back feel," on page 38, and what was his answer?

A. "The back feels fine."

Q. On page 40 you asked him, beginning at line 13 and down through 18——

A. I asked him about how the lower part of his back, other than the coccyx bone—"does that ever bother you?"

(Testimony of Charles M. Haid, Jr.)

"Answer: Do you mean—I don't understand you. Do you mean where the vertebrae——?

"Question: Yes.

"Answer: No, that doesn't bother me."

Q. Would you take that to mean where the transverse processes were broken, it didn't bother him at the time of the deposition?

A. It is hard to tell, Mr. Taylor, exactly what Mr. Williams was talking about from time to time because of the fact that, as you—well, maybe you don't know Mr. Williams. Mr. Williams is not a very well educated man, among other things, and at the time his deposition was being taken, he was very nervous and a very irritable fellow at that particular time, and he appeared to me to be in considerable pain; and he had difficulty, frankly, in giving proper answers to questions. It was one of those things where you do the best you can with the witness at the time.

Q. Did he tell you how the fractures had healed in his pelvis or what somebody had told him how the fractures had healed? [250]

A. If it is in the deposition, he must have. I don't remember those exact things.

Q. Did you ask him what he had been told about his fractures and his answer was, "They said they have healed fine, fine, beautifully. He also told the other fellow that happened to be assigned to this particular place of taking the pictures, I presume that he was one of the officials, told me that my

(Testimony of Charles M. Haid, Jr.)

pelvic bones had healed beautifully." Do you remember that now?

A. Apparently he said so. It is in the deposition. But, of course, you like to cover those things when you take a plaintiff's deposition to see what a man has been told, but you do not necessarily rely upon what the man said somebody told him as to a medical matter in his back where he is a stevedore. You go to the doctors.

Q. Did you have him examined by an independent doctor?

A. I did not. I relied upon the report that I received from Dr. Yoell, who is an American President Lines doctor. He is the doctor I would have sent the man to in any event, so there is no use in duplicating effort.

Q. Didn't you tell us yesterday that you thought Dr. Yoell's report might have been optimistic?

A. Yes, I did so, and I believe that is correct. You see, doctors, as you well know, I am sure, Mr. Taylor, doctors who are hired to examine people on behalf of insurance carriers or [251] corporations of one sort or another, are usually fairly conservative in their approach to the extent and nature of a man's injuries, and they are usually optimistic as to the extent of his recovery, just as many doctors who examine injured people on behalf of their own selves are generally prone to perhaps put it on a little bit as to what it is the man has suffered from. You have to weigh those things.

Q. Did you know that Dr. Yoell was the only

(Testimony of Charles M. Haid, Jr.)

doctor who had seen Mr. Williams and had treated him?

A. I believe he was the only doctor who treated him, or, rather, that he was in charge of the case. I do not know whether any doctors out at St. Mary's Hospital had an active hand in the treatment, but I know he was the doctor who treated Mr. Williams, yes.

Q. Didn't you know, or didn't you appreciate the plaintiff's proof would depend upon statements made by Dr. Yoell on the stand; that is, proof of injuries?

A. Yes, I did, plus another doctor. Dr. Yoell was not the only doctor.

Q. Were you in the deposition that Mr. Williams testified at the time of the deposition he could bend over and touch his toes?

A. Did he say that in his deposition, Mr. Taylor? I don't recall.

Q. I think he was talking about the exercises that he was [252] doing, on page 27: "And what does he do when you go back to the office? Just look at you or what?

"A. Looked at me and asked how I am feeling. He has had me to sit down and cross my legs, and he has had me to stand up and touch my toes, bend and touch my toes.

"Q. Can you do those things? Can you touch your toes when you bend over?

"A. Yes.

"Q. Good for you. How about walking around?

(Testimony of Charles M. Haid, Jr.)

Can you walk pretty well without using the cane?

"A. Without using the cane?

"Q. Without using the cane.

"A. Yes.

"Q. When I say 'walk pretty well', I mean, do you have to shuffle or truck your legs or something of that sort? Do you walk without the cane?

"A. Yes.

"Q. And walk fairly well?

"A. Fairly well, yes."

Do you recall now that those statements were made in the deposition? A. Yes.

The Court: What is the date of this?

Mr. Taylor: October 7, 1952, ten months after the accident. [253]

Q. Now, I believe that you said that one of the factors you took into consideration was the age of the plaintiff. A. That is right.

Q. I think you said he was 31 at the time of the accident. A. I believe that is correct.

Q. And you took into consideration his life expectancy? A. Yes.

Q. What figure were you using on the life expectancy?

A. Whatever the figure was—what is the Commissioner's Standard Mortality Table of Life Expectancy?

Q. You were using that figure?

A. Yes.

Q. Do you recall what that figure was?

A. I don't recall the exact figure, no.

(Testimony of Charles M. Haid, Jr.)

Q. I think you said you had been furnished with a copy of Dr. Yoell's report of December 15, 1952?

A. Yes.

Q. Do you recall Dr. Yoell's conclusion: "There is no question that this man was severely injured. He has made an extremely satisfying recovery. At present it is too early for him to return to heavy work, and I think his period of continued disability should be from three to four months."

A. I recall that that was in there.

Q. You recall that that was in the doctor's report?

A. There is also a page and a half of other comment by the [254] doctor that was in there, too. You have to take the whole report into consideration.

Q. But you knew, did you not, that at the time of trial, if this case were tried, that Dr. Yoell would be bound by the statements that he had made in his report, is that not correct?

A. Just the statement that you read to me, Mr. Taylor, does not show the entire picture, because you have to look at the rest of that report and see what it was that Dr. Yoell was talking about as to the permanent disability that the man was going to have. There is more to it than just that factor, that he made a satisfactory recovery.

Q. Yes, the doctor told you that he had a definite limp, with limitation of motion in the right hip, and that there was a moderate amount, a mod-

(Testimony of Charles M. Haid, Jr.)

erate limitation of forward flexion of the spine. He told you that, didn't he?

A. That is right.

Q. But so far as the neurological examination was concerned, all the reflexes were present, were they not? A. Apparently.

Q. There is a statement here that there is no evidence of any other physical disability other than what he has already said.

A. Other than what he is talking about throughout his report.

Q. Is there anything in the report other than this definite [255] limp and limitation of motion of the right hip that looks to be of a permanent nature?

A. Well, the matters which are spoken of by Dr. Yoell in here are not the only things that I was concerned with in this case. I don't recall just how it happened to come about, but we got into this problem of the future onset of traumatic arthritis in the site of the fracture of the hip, even though it was not mentioned.

Q. In the report?

A. That was very definitely taken into consideration. But there was also taken into consideration not only the fact that he had injuries to his spine and to his pelvis, his hip socket and that sort of thing, but also the matter of what had happened to him mentally as a result of these things: the nervousness, the irritability, and the way he acted around the house, and the relationships with his

Testimony of Charles M. Haid, Jr.)

vife—all those things, because I went into that ›retty thoroughly with Mr. McMurray and Mrs. Villiams in the absence of Mr. Williams.

Q. Did you ever have him examined by a neuro-urgeon or a neurologist?

A. No, I did not.

Q. Is there anything in this report that refers o nervousness, that is, the report of Dr. Yoell?

A. No, there is not. But I have a very definite ecollection [256] that that subject was taken up by Ir. McMurray and myself with Dr. Yoell, and it vas in the form of an oral conference, in confer-nce or something of that sort with Dr. Yoell con-erning matters over and above what was in that ›articular report.

Q. And did you take the deposition of Dr. Yoell?

A. No, I didn't take Dr. Yoell's deposition.

Q. Did you take the deposition of the custodian f the records of St. Mary's Hospital?

A. No, I did not.

Mr. Taylor: I have no further questions.

Mr. Gerhardt: If your Honor please, I merely vish the record to show also that the deposition ontained the following questions: (Reading).

"Q. That is good. How about your feeling of ny pain in your back since you have been off the rutches, does your back or your pelvis or any ›ther part hurt you at any time?

"A. The pelvis bothers me at times.

"Q. Now, how does—what is it?

(Testimony of Charles M. Haid, Jr.)

"A. Pains there.

"Q. What? "A. A dull pain.

"Q. A dull pain. And do you know where that fracture was in the pelvis? Do you know what part of it it was? [257] "A. No.

"Q. And this pain that you feel, is that around your hips or in the——

"A. (Interrupting) Lower part of my buttocks.

"Q. On the right side?

"A. On the right side.

"Q. And how about your lower back?

"A. The coccyx bone.

"Q. Yes. How about that?

"A. When I sit up too long, when I can't sit on anything hard for a long period of time, I have to take a pillow along, and even by taking the pillow I get tired, then I have to twist and turn to kind of rest myself up like that. That is how I get relief, is twisting and turning.

"Q. Does your back or any part of your body at the end of the day after you have been walking around for any period of time——

"A. (Interrupting) Yes.

"Q. How does it bother you, how would you describe it?

"A. From my knee down to my ankle I get a dull ache, and if I exert myself too much my leg will cramp on me in the fat part of the thigh.

"Q. Both legs? [258]

"A. Just the one. My heels usually, as a rule, if I do too much walking with the cane or without

Testimony of Charles M. Haid, Jr.)

t, doesn't make any difference, my heels get kind f—they feel sort of like they have been on a strait acket or something, some kind of a clamp been ressing on them, something that has been pressed n them. And it affects me sexually, intercoursing t times it bothers me afterwards and sometimes hile it is in the process."

That goes through to Page 40, line 9.

Mr. Taylor: At this time, your Honor, I am oing to move to strike the portion of the deposi- ion, the last sentence just read: "And it affects ne sexually, intercoursing at times it bothers me fterwards and sometimes while it is in the proc- ss," as not responsive to the question that was sked, and this deposition was taken subject to all notions to strike.

Mr. Gerhardt: If your Honor please, we are not sing this deposition for that purpose insofar as ny examination of Mr. Williams is concerned. Counsel has asked the witness on the stand as to hat factors he used, and he said he used the dep- sition, and that is part of the testimony in the eposition that he used. I am offering it merely or that purpose.

The Court: I will allow the questions and an- wers to stand. The objection is overruled. [259]

Mr. Gerhardt: No further questions.

Mr. Taylor: No further questions.

Mr. Gerhardt: If your Honor please, we have scertained the wage rates and increases and I have liscussed these with Mr. Taylor. He has checked

on them, and we have stipulated that the data here on this sheet dated June 9, 1955 may be received in evidence as Plaintiff's Exhibit next in order.

The Court: Any objection?

Mr. Taylor: No objection, your Honor.

The Court: It may be admitted and marked.

(The wage rates referred to were thereupon received in evidence and marked Plaintiff's Exhibit 24.)

Mr. Gerhardt: If your Honor please, the exhibit from the Pacific Maritime Association that pertains to the man's earnings, Plaintiff's Exhibit Number 11, shows for the first two quarters of 1950 there were very few hours put in, and I had asked Mr. Taylor to check, because it was my understanding that that was just before the beginning of the Korean war. Shipping was slow and loading and discharging of cargo was at a minimum ebb, and if it is a matter of common knowledge, we could stipulate to it.

Mr. Taylor: I'm sorry. I just overlooked that as far as checking is concerned. I have no personal knowledge one way or the other.

Mr. Gerhardt: I will leave that, then, unless you want [260] to check later.

Mr. Taylor: That is satisfactory.

Mr. Gerhardt: If your Honor please, I will reoffer again the Safety Rules which have been admitted for identification only. It is Plaintiff's Exhibit 18. I will offer that in evidence in the light of the testimony of the longshoremen.

The Court: Let it be admitted and marked.

Mr. Taylor: We make the same objection to that portion of the offer.

The Court: The objection will be overruled. Let it be admitted and marked.

(The document referred to was thereupon received in evidence and marked Plaintiff's Exhibit 18.)

Mr. Gerhardt: The Plaintiff rests, your Honor.

The Court: We will take a recess.

(Recess.)

Mr. Gerhardt: If your Honor please, based upon a discussion during recess and a checking of the exhibits, I find that we still have two exhibits which are in only for identification. One is Plaintiff's Exhibit Number 21, which is the deposition of Robert Williams, and based upon the testimony that has been presented, I offer that deposition in evidence.

Mr. Taylor: We object to certain portions of that deposition, certain legal objections, such as irresponsive [261] answers, questions that would be subject to legal objection, where the same question asked of the witness on the stand.

The Court: Subject to that qualification, it may go in.

Mr. Taylor: My only objection is the legal objections that would be available to the party opposing the deposition.

Mr. Gerhardt: It may be admitted on that basis, your Honor?

The Court: For that limited purpose, I will allow it.

(The deposition referred to was thereupon received in evidence and marked Plaintiff's Exhibit 21.)

(Thereupon a motion to dismiss was made by counsel for the defendants on the ground that the evidence does not show any action over for indemnity against the defendant, Marine Terminals Corporation. The motion was argued, and at the conclusion the Court made the following ruling:)

The Court: For the purpose of the record, the motion will be denied. We will recess until Monday morning at 10:00 o'clock. [262]

Monday, June 13, 1955, 10 a.m.

The Clerk: American President Lines vs. Marine Terminals Corporation, further trial.

Mr. Gerhardt: Ready.

Mr. Taylor: Ready.

Mr. Gerhardt: If your Honor please, before the defendant proceeds with its case, there are two matters which I would like to comment upon. First, your Honor, we have had discussions with opposing counsel with respect to the attorneys fees that were demanded in this case, and based upon the fact that, although there was notice of the settlement, according to our proof, there was no original demand to come in and defend the case by APL against Marine Terminals, and pursuant to what are probably analogous cases, although not of particular point in this case, we have decided to withdraw the request for attorneys fees, which will be agreeable with the defendants, your Honor.

Mr. Taylor: That is right.

The Court: I am not quite sure that I might ot protest.

Mr. Gerhardt: There is one further issue, your Ionor, which has arisen because of our continued onsideration of the argument made by Mr. Nave t the close of the Court's session on Friday and ur further consideration of the [263] trial brief hich they filed on Wednesday, when this matter rst came on for trial, and that is the issue peraining to the contention in Paragraph two of this rial brief, Page 1, line 27, and I quote: "Our ability (meaning the defendant Marine Terminals' ability), if any, to respond in indemnity, must be redicated on proof by American President Lines f sole active negligence on our part and mere assive negligence on their part."

Now, your Honor, if there is passive negligence n the part of one party, the negligence on the part f the other party could hardly be sole, that is, the nly negligence, but it is defined as sole in cases, n the sense of being the proximate cause of the ccident. The words, "in the cases", "sole or primary" speaking of the other party's negligence, re used in the cited cases even though there is egligence of some kind, but primarily passive negigence on the part of the original party. Those vords, "sole, primary, direct and proximate" are sed in that same sense in our amended complaint, our Honor. If your Honor will refer to our mended complaint on Page 4, line 2, we allege hat the sole, active, primary and proximate cause

of the injury sustained by Robert Williams was the negligence of the defendant, Marine Terminals. We are using those words, your Honor, in the same sense that was used by the Court in the Berti vs. Compagnie case cited in the briefs on file here, which is [264] used in the same sense by the Ninth Circuit in the Arrow Stevedoring case, where there was negligence on the part of the shipowner, and yet the Court used the words "sole, direct or primary" as defining the negligence on the part of the other party. In order, your Honor, that there may be no question as to the fact that we are using those words in that sense, that is, in the alternative, we would ask your Honor for permission to interline the word "or" on line 2 of Page 4 of our amended complaint after "sole" and after "active", so that it will read, "Within the issues of this case as they have been tried, the sole or active or primary and proximate cause of the injuries." In that sense, your Honor, that is the very sense in which they are defined in the cases, in the alternative, and I suggest in order that there may be no question, that the Court interline the word "or" after the word "sole" and after the word "active" on line 2, Page 4.

The Court: Any objection?

Mr. Nave: Yes, your Honor, very briefly. We do object to the amendment at the close of the plaintiff's case. I wish to call your Honor's attention again to our trial brief, which we filed, in which we set forth our position from a legal standpoint. We take the position, your Honor will recall, in

ıe third paragraph of our trial brief, that where defective appliance or structure or piece of equipıent is [265] supplied by the shipowner, and then ıe injury is in reference to that equipment, that ıere isn't any indemnity over. The evidence in ıis case clearly shows that the beams had a lockıg device entirely supplied by the plaintiff. This is ot the case where an appliance was supplied under contract by the stevedoring company. We feel ıat the addition of the "or" is a complete changıg of the course of action. Your Honor will recall ıat the memorandum decision or opinion filed by udge Carter at the time of our motion to dismiss as heard on the pleadings dealt with this matter f the sole, active and primary negligence in this ase. We feel, therefore, that there is a change ttempted here in the theory of the plaintiff's case, nd we object to it. I would like to direct your ttention to some language in the Rothschild case: "Here it was clearly foreseeable that if the steveoring company made the ship unseaworthy, causıg injury to a stevedore employee, the owner would e liable to the employee for the full amount of his ıjury under the case of Seas Shipping Company s. Sieracki."

We do not have that situation here where the tevedoring company has made this ship unseaorthy. The unseaworthiness, if there is unseaorthiness in this case, and we do not concede that, lthough counsel has as part of his burden [266] f proof the burden to show unseaworthiness, the nseaworthiness if any, was not occasioned by the

locking device, and so forth, that was supplied by the stevedoring company, but it was something supplied entirely by the ship, and in the absence of an express contract of indemnity, which is not in this case, none of these decisions, your Honor, permit a recovery for indemnity over; and we therefore object to the amendment in which they are attempting to change their cause of action.

The Court: Is the matter submitted?

Mr. Gerhardt: If your Honor please, may I also call attention to the liberality of the Federal Rules in amending pleadings even after judgment in many cases, and I feel the effect in this case of proving sole, direct and primary would be to prove our case three times. I do not think anyone would contend that, and it is perfectly obvious that this is a request which is being made to clarify the pleadings within the issues already defined.

The Court: It may be granted. (To the Clerk) Will you insert those words.

The Court: Is that your case?

Mr. Gerhardt: Yes, your Honor.

Mr. Taylor: May it please the Court and counsel, the defendant's evidence in this case will show that it was the duty of the ship to provide safe equipment. It was also [267] the duty of the ship, the plaintiff in this case, to provide a safe working place for the stevedores and all stevedore operations. The evidence will show that the strong backs or hatch beams or king beams, as they are sometimes called, are an integral part of the ship. They are also a part of the equipment that is being fur-

ished for the loading of cargo on top of certain atch boards. The evidence will show that the duty f maintenance of the strong backs or hatch beams, ne duty of the repair of the strong backs or hatch eams is exclusively with the ship and not with the evedoring company.

The evidence will show that the President Polk ad furnished a strong back without a lock. The vidence will also show that the unlocked strong ack can, with slight effort, be raised and lifted rom the supporting cleat or slot, and the evidence ill further show that the President Polk did not urnish a substitute for the locking device that was issing.

The evidence will further show that one of the hip's officers knew of that when the ship docked n San Francisco on January 29, 1952, it had cerain strong backs that did not have locks. The ocks were missing. We will call as our first witess Mr. Andersen, please.

ARTHUR M. ANDERSEN

as called as a witness, and, being first duly sworn, estified as follows: [268]

The Clerk: Q. What is your name?

A. Arthur M. Andersen.

Direct Examination

By Mr. Taylor: Q. Where do you reside?

A. 3516 Morcom Avenue, Oakland.

Q. Your business or occupation?

A. Superintendent.

Q. Superintendent of what?

(Testimony of Arthur M. Andersen.)

A. Marine Terminals, stevedore.

Q. How long have you been so engaged?

A. I have been superintendent for about seven years.

Q. Prior to that time?

A. Well, I was a walking boss then.

Q. On the front? A. Yes.

Q. How long have you followed the occupation of being a longshoreman?

A. Since 1932.

Q. In what ports have you followed this occupation? A. San Francisco only.

Q. As of the month of January, 1952, who was your employer?

A. Marine Terminals Corporation.

Q. You were at that time designated as a walking boss? A. No, I was superintendent.

Q. Are you familiar with the Pacific Coast Marine Safety Code? [269] A. Yes, I am.

Q. Are you familiar with the rule that the ship is to provide safe gear in stevedoring operations?

A. Yes, I am.

Q. And the rule that the ship is to provide a safe place——

Mr. Gerhardt: If your Honor please, I should like to have that rule identified. Otherwise, I will object to the question.

Mr. Taylor: I show you Plaintiff's Exhibit 18 and call your attention to Rule 201.

Q. Are you familiar with that rule?

A. Oh yes, I am.

Testimony of Arthur M. Andersen.)

Mr. Taylor: For the record, your Honor, I will ead 201: "The owners and/or operators of vessels hall provide safe ship's gear and equipment and a afe working place for all stevedoring operations n board ship."

Q. Were you on the President Polk on the day Ir. Williams was hurt? A. I was.

Q. Were you on the Polk at the moment of his njury? A. I was not.

Q. Do you know how long after the injury it vas that you arrived at the scene?

A. I couldn't tell you the time, exactly. It was fter the injured man was taken away to the hos- ital. [270]

Q. Was the strong back that was involved in this ccident pointed out to you? A. Yes.

Q. Did you observe it? A. Yes.

Q. It has been called a strong back, a king beam r a hatch beam. Are all those terms used synono- nously? A. Yes.

Q. What was your observation with reference to he locking device?

A. Well, it was a lock and the nut on one end vas entirely missing. In other words, the whole ocking device was missing at one end.

Q. There was merely a hole in the beam where bolt normally goes through, is that correct?

A. Yes.

Q. Who furnishes the strong back, the ship or he stevedoring company? A. The ship.

(Testimony of Arthur M. Andersen.)

Q. Who maintains the strong back? The ship or the stevedoring company?

A. The ship takes care of that.

Q. When locks are missing, who replaces them, the ship or the stevedoring company?

A. The ship. [271]

Q. What is the purpose of the lock?

A. So the strong back can not be forced out in any of the operations.

Q. It is to make it secure in the slots?

A. It is to make it safe as far as working in the hatch.

Q. Insofar as the locks on the President Polk are concerned, are they on the same side of the strong back, or are they on opposite sides of the strong back?

A. They are on the same side.

Q. Did you make any observation as to the condition of the lock at the other end? You have already described one end now.

A. No, I did not.

Q. On the President Polk on the day of the accident, January 30, 1952, was there any substitute locking device provided by the ship to hold the strong back in the slot? A. No.

Mr. Taylor: Those are all the questions I have.

Cross Examination

Q. (By Mr. Gerhardt): Mr. Andersen, you are familiar with Safety Rule 205, providing for the safety duties of the supervisory personnel. I am

(Testimony of Arthur M. Andersen.)

reading (a): "To see that all working conditions are safe and that gear is in apparent safe working condition during operation." Are you familiar with that rule? A. Yes, I am. [272]

Q. Are you also familiar with (d): "Where conditions warrant and he is not in immediate touch with his superintendent or other employer's representative, to stop the work, if necessary, to avoid accidents." Are you familiar with that one?

A. That is right.

Q. Mr. Andersen, whose duty is it to remove the beam during longshore work aboard the vessel?

A. Just what do you mean by whose duty it was?

Q. You were asked about duties here so far as maintenance of the beam is concerned. Isn't it provided that the longshoremen remove and replace beams? A. That is right.

Mr. Gerhardt: That is all.

Redirect Examination

Q. (By Mr. Taylor): Mr. Andersen, when the statement is made to remove and replace beams, does the longshoreman ever substitute one beam for another in replacement?

A. Yes, on occasion, yes.

Q. You mean substitute one strong back, that is, you get it from your own stores and put it on the ship? A. Oh no, no.

Q. Have you in your experience ever replaced

(Testimony of Arthur M. Andersen.)

a strong back to the extent that you have substituted one strong back for another? [273] A. No.

Mr. Taylor: That is all.

Recross Examination

Q. (By Mr. Gerhardt): Mr. Andersen, you can obtain another strong back or beam right from those that are on the ship, from other portions of the hatch, can you not?

A. You can, but it may not fit.

Q. It may not, but you know pretty well before you try it, don't you? A. No.

Q. You do not know it before you try?

A. Yes.

Q. If conditions are such that there is no reason for the beam to be in at all, it can easily be removed to the deck, isn't that so?

A. If it is not what?

Q. If it is not needed in place. A. Yes.

Q. It can easily be removed up on deck, isn't that so? A. It can be put up on deck, yes.

Mr. Gerhardt: That is all.

Mr. Taylor: That is all. We will call Mr. Bleile, if the Court please.

ERNEST BLEILE

was called as a witness on behalf of the defendant, and being [274] first duly sworn, testified as follows:

The Clerk: Your full name, please?

A. Ernest Bleile.

(Testimony of Ernest Bleile.)

Q. Where do you live?

A. 1838 Valota Road, Redwood City.

Q. Your business or occupation?

A. Stevedore.

Q. How long have you been so engaged?

A. 34 years.

Q. On this coast. A. San Francisco.

The Court: Take the witness.

Direct Examination

Q. (By Mr. Taylor): Prior to being a stevedore, did you ship at sea? A. I did.

Q. For how long?

A. Since I was 13 years old.

Q. By whom are you employed at the present time, Mr. Bleile?

A. At the present time, Mutual Stevedoring Company, San Francisco.

Q. As of January 29th and 30th, 1952, by whom were you employed?

A. Marine Terminal Stevedoring Company.

Q. What was your business with Marine Terminals?

A. Walking boss, or supervisor on ships. [275]

Q. As supervisor generally what was your duty?

A. Supervise and direct loading and unloading of ships.

Q. Did you have safety duties as well?

A. Oh, yes.

Q. Are you familiar with the Pacific Coast Safety Rules? A. Yes, I am.

(Testimony of Ernest Bleile.)

Q. Calling your attention to Rule 201, are you familiar with that?

A. I believe I am. (A document was handed to the witness.)

The Witness: Yes.

Mr. Taylor: Q. Were you on board the President Polk on the day Mr. Williams was injured?

A. I was.

Q. Were you on board the President Polk the day before Mr. Williams was injured?

A. Yes.

Q. Do you recall about what time you went aboard the President Polk on January 29, 1952? That is, the day before Mr. Williams was injured?

A. I went aboard between 12:00 and 1:00.

Q. That is around noon?

A. Yes, around noon time.

Q. Do you know Officer Hogan? A. I do.

Q. How long have you known him? [276]

A. Prior to that about two years, maybe three.

Q. What was his position on the ship?

A. Chief Officer.

Q. Did you see Officer Hogan on January 29th, 1952? A. I did.

Q. About how long after you went aboard was it that you saw him?

A. Generally, the first thing I do, I look up the First Mate, the Chief Mate. I speak to him.

Q. Did you have a conversation with Officer Hogan about work on the President Polk?

A. I did.

(Testimony of Ernest Bleile.)

Q. Did he say anything to you about the strong backs or hatch beams on the President Polk at that time?

A. He did. I had a conversation, during the conversation he mentioned to me that he would like me to remove all excess beams, what I didn't use for handling cargo, because he had some beams on the ship which had faulty locking devices.

Q. Just what did he say to you, using his exact words, with reference to the condition of these beams, as best you recall?

A. He called me below. He said, "Will you keep your eyes open? I believe I have strong backs here which have no locks." In other words—— [277]

Q. After he told you that, what did you do?

A. I instructed both gangs in this particular hatch—we were standing by Number 1 hatch, by the way—and I instructed both gangs to stop work then and remove what excess beams he had up until then, which was done, and then we proceeded to work again.

Q. Do you know how many beams you removed or had removed on the day before the accident and how far down did you go?

A. I removed all top main battens. They are big steel beams. The next deck down, the upper tween deck, I removed all but one, which is far removed from operations, and which is safety locked, and that is all I removed that day.

Q. Was the gang in Number 1 hatch loading or unloading on the 29th?

(Testimony of Ernest Bleile.)

A. That was the first day?

Q. Yes. A. Unloading.

Q. They were unloading from what deck?

A. Both gangs were unloading from the lower 'tween.

Q. That is the lower 'tween deck. Did you observe the accident to Mr. Williams?

A. No, I wasn't aware of any. I was in the stern of the ship, Number 5 hatch.

Q. Did someone notify you and did you go to the scene? [278]

A. They notified me and I came up forward.

Q. Was Mr. Williams still there, or had he been removed?

A. He was still down in the hatch.

Q. Did you at any time following the injury to Mr. Williams observe the king beam that was involved in the accident?

A. I instructed that it be hoisted on deck.

Q. Did you observe it?

A. I looked at it and it had one lock missing.

Q. Did you observe what was the condition of the other end? A. It was okay.

Q. When you said one lock was missing, can you tell the Court just exactly what you mean by that?

A. The bolt and also the pin, what constitutes the lock, the bolt and pin both were missing.

Q. Do you recall an incident on the President Polk regarding some removal of drums on the lower 'tween deck? A. I do.

(Testimony of Ernest Bleile.)

Q. Was that before or after Mr. Williams was injured? A. Before.

Q. Was it the same day or was it the day before, do you recall?

A. The same day of the accident.

Q. In the morning prior to the accident, is that right?

A. That is right. That is correct. [279]

Q. Who complained to you of the drums that were later removed? A. The gang steward.

Q. Do you remember his name?

A. No, I do not. I don't remember his name.

Q. What did he tell you was wrong? What did he complain of?

A. They called my attention to drums being stowed in the lower 'tween deck, which, in his opinion were not safe to work around. I then got lashing ropes and instructed the stevedores to lash the drums, tie them, so they wouldn't fall down. Well, it was agreeable first, but then after some more discussion, the steward—they thought they should be taken out altogether, so I instructed them to take them out to the pier.

Q. How long did it take, approximately, that operation?

A. I would say 45 minutes, possibly an hour.

Q. At or during the time of the complaint of the drums that was made to you by the steward, did the gang steward advise you of any strong back or king beam that didn't have a lock? A. No.

Q. Did the gang boss at the time that you were

(Testimony of Ernest Bleile.)

doing this removing of drums or any time prior to advise you that there was a strong back or king beam without a lock? A. No. [280]

Q. Did anyone tell you other than what you have related about Mr. Hogan, did anyone tell you about any other lock being missing?

A. No, nobody did.

Mr. Taylor: No further questions.

Cross Examination

Q. (By Mr. Gerhardt): Mr. Bleile, do you know how many beams were removed the day before the accident, as a safety measure?

A. Removed all steel pontoons on upper deck, all beams on upper 'tween deck leading to the lower 'tween, all but one.

Q. The beams that you were requested to remove without locks, that was as a safety measure, is that right? A. That is correct.

Q. If the men working in the gang under your supervision find an unsafe condition—let us say a beam that can't be latched—do they have to get in touch with you in order to have authority to remove it? A. No, sir.

Q. Do you tell them that they can go ahead and remove it?

A. That is the practice. If the gang steward sees any unsafe condition, it is in fact his business to see that it is taken off, if he does see it.

Q. Did you give instructions to your gang stew-

(Testimony of Ernest Bleile.)

ard that if he found any unsafe beams he was to remove them?

A. I gave that instruction the day before. [281]

Q. Did you give those instructions to your gang steward on the next day? A. No, I did not.

Q. You did not. Did you give any instructions to your gang boss to stop work and remove beams that were found to be unsafe?

A. The first day.

Q. The first day only and not to your gangs the second day? A. No, not the second.

Q. If the gang finds, either through the gang boss or the gang steward, finds that there is an unsafe condition or an unsafe beam, as I understand you, they have direct authority from you to stop work until that unsafe condition is corrected, is that right? A. Yes.

Q. As between the gang steward and the gang boss, which one has the responsibility to remove or correct an unsafe condition that he finds?

A. The gang steward will call such a thing to the attention of the gang boss.

Q. The gang boss? A. That is right.

Q. And without contacting you, he can go ahead and do anything that he finds is necessary?

A. If it is against the safety rules, that is correct. [282]

Q. You are familiar, are you, Mr. Bleile, with Safety Rule Number 826 that provides no cargo shall be worked through a section of the hatch un-

(Testimony of Ernest Bleile.)

less the strong back of the adjacent section is bolted, locked or secured by other means?

A. That is right.

Q. You are familiar with that rule, aren't you? That is all.

Mr. Taylor: That is all, Mr. Bleile, thank you. Your Honor, our next witness was Mr. John Black, the attorney, and we had anticipated he would be here at 10:30, but there may have been a delay of some sort. Could we have a short recess? I am sure he is on his way.

The Court: Very well. We will take a recess.

(Recess.)

JOHN H. BLACK

was called as a witness on behalf of the defendant, and being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Taylor): Please state your name for the record. A. John H. Black.

Q. What is your profession, Mr. Black?

A. Attorney at Law.

Q. Where do you maintain your offices?

A. 233 Sansome Street.

Q. As of the month of January, 1952, who was the compensation [283] carrier for Marine Terminals?

A. Fireman's Fund Insurance Company.

Q. Were you attorney for Fireman's Fund?

(Testimony of John H. Black.)

A. Yes, sir. May I *see* in some particulars, including that.

Q. Were you attorney for Marine Terminals?

A. No, sir.

Q. Did the Fireman's Fund pay compensation to Robert Williams because of an accident and injuries received on the SS President Polk during the month of January, 1952? A. Yes, sir.

Q. Did the Fireman's Fund pay medical expenses and hospital expenses pertaining to Robert Williams' injury? A. Yes, sir.

Q. Did Fireman's Fund have a compensation lien for the sums expended?

A. Well, they had a right to recover them.

Q. Did you discuss the Williams case with Mr. Charles Haid, Jr., attorney for the American President Lines? A. Yes, sir.

Q. When did you first discuss that Robert Williams case with Mr. Haid?

A. December, 1953.

Q. That was December, 1953?

A. Yes, sir. [284]

Q. How do you establish that time, Mr. Black?

A. I have this recollection of the matter, that he called me concerning the case, advising me that they had made a settlement with Mr. Williams. I was taken very much by surprise, and not wanting to exhibit any particular curiosity, I ascertained who the attorneys for Mr. Williams were, and I communicated with them and asked them the details of the settlement and the nature of the action

(Testimony of John H. Black.)

against the American President Lines; and they sent me a copy of the complaint and a copy of the release that Mr. Williams had signed.

Q. Who sent that to you?

A. I think it was Mr. Sibbett of Mr. Gladstein's office. May I correct that? It was a gentleman in my office whom I sent to get it for me, Mr. Schaldach.

Q. What was the date that you received the copy of the summons, the complaint and the release?

A. December, 1953.

Q. That was after the release had been executed, is that correct?

A. That was some eleven and a half months or eleven months after the release had been executed.

Q. Did the Fireman's Fund ever file a lien for the compensation and medical? A. No, sir.

Q. And why not? [285]

A. The only thing I can say in that regard is we were asleep at the switch. It simply wasn't followed up the way it should have been in my office. We didn't even know the matter had been terminated or had been settled.

Q. After the settlement was made it was too late for you to establish your lien, is that right?

A. That is correct.

Q. Did Charles M. Haid ever discuss your contributing to the settlement of the Williams case?

A. He asked us to.

Q. When was that discussion?

(Testimony of John H. Black.)

A. That went on, sir, from December 1953 until the late spring of 1954.

Q. That was after the settlement had been made?

A. That was a year and a half or a year and a quarter afterwards, yes.

Q. It is your testimony that no discussion of the Williams case was held with Mr. Haid prior to the time that settlement was made?

A. None that I have any recollection of.

Mr. Taylor: Thank you, Mr. Black.

Cross Examination

Mr. Gerhardt: Q. Mr. Black, was the compensation which Fireman's Fund Insurance Co. or Fireman's Fund Indemnity Co.——

A. Fireman's Fund Insurance Co. The Indemnity Insurance is [286] onshore, and the Fireman's Fund offshore.

Q. They had received a notice of election of Mr. Robert Williams to sue APL, is that correct?

A. That is correct.

Q. When those notices of election are filed, do you follow the cases after that, that is, the third party cases to see if they are settled?

A. We are supposed to. We do not always.

Q. You did not follow it in this particular case?

A. We did not. That is why we did not collect our lien.

(Testimony of John H. Black.)

Q. Otherwise you would have tried to collect?

A. Yes.

Q. Your lien from American President Lines?

A. Either that or the bills we had expended, which I think in this case were about $2500.

Q. Did you keep any notes of your conversations with Mr. Haid?

A. No, but I do have the letter from Gladstein's office forwarding me the complaint and the release, which was in December 1953.

Q. That was after a discussion had taken place?

A. Yes, about two days afterwards. That is the first thing I did after talking to Mr. Haid.

Q. That is your best recollection now?

A. That is my best recollection, and thereafter I had an [287] investigation made of the facts.

Q. You received medical reports from Dr. Yoell as to the progress of Mr. Williams, is that correct?

A. No, it is not correct. We did up to a point, up to April 1952, when compensation was terminated, because the suit was filed. We thereupon informed the doctor that we were no longer responsible for their charges and had no further interest in the matter.

Q. Even though you were not attorney for Mr. Robert Williams, in January of 1952 you did purport to represent them during the time of these discussions between American President Lines' representatives and Marine Terminals as to the question of indemnity or contribution, is that correct?

(Testimony of John H. Black.)

A. I wouldn't say I purported to represent them.

Q. You did represent them?

A. No, I wouldn't say that. These compensation policies, as you know, take over the employers' liability for compensation. It is not infrequent that attorneys for firms communicate directly with the insurance company rather than the employer, who simply turns it over to the insurance company in the last analysis.

Q. That compensation policy also takes over problems other than just workmen's compensation, isn't that correct? A. Employers' liability.

Mr. Gerhardt: That is all. [288]

Mr. Taylor: No further questions. Thank you, Mr. Black.

The defendant Marine Terminals rests, Your Honor.

Mr. Gerhardt: The plaintiff rests, Your Honor. No rebuttal.

Mr. Nave: At this time, may it please Your Honor, we again renew our motion for dismissal of the action against the defendant and ask for judgment for the defendant, now that the entire case has been concluded.

(Thereupon after argument on the motion the matter was submitted on briefs.) [289]

[Endorsed]: Filed October 3, 1955.

[Endorsed]: No. 14959. United States Court of Appeals for the Ninth Circuit. American President Lines, Ltd., a corporation, Appellant, vs. Marine Terminals Corp., a corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: December 1, 1955.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14959

AMERICAN PRESIDENT LINES, LTD., a corporation, Appellant,

vs.

MARINE TERMINALS CORPORATION, a corporation, Appellee.

STATEMENT OF POINTS

Appellant, American President Lines, Ltd., hereby submits a concise statement of the points upon which appellant intends to rely in this appeal as follows:

1. The Court erred in not finding that the injury sustained by the longshoreman arose from plaintiff shipowner's breach of its non-delegable duty to

furnish the longshoreman a seaworthy ship and from defendant stevedore's active negligence.

2. The Court erred in finding that the injury sustained by the longshoreman was incurred because of fault or negligence on the part of plaintiff shipowner.

3. The Court erred in not finding that the defendant stevedore's negligence was the sole, active or primary cause of the injury to the longshoreman.

4. The Court erred in failing to find that even if the plaintiff was negligent, that the injury to the longshoreman was caused by an independent act of negligence on the part of defendant which supervened in time and became the sole, active, primary or proximate cause of the injury.

5. The Court erred in that the evidence was insufficient to support finding of fact No. 8 and erred in failing to find that the winch driver was negligent contrary to finding No. 8.

6. The Court erred in failing to find that defendant stevedore company and its employees were fully aware of the dangerous condition created by the missing locking device on No. 2 strongback and failed to take proper precautions to suspend operations until the unsafe condition was corrected or to take any measures to insure that the dangerous condition was corrected by removing the defective beam and that defendant was grossly negligent and reckless in its failure to do so.

7. The Court erred in failing to find the walking boss, gang boss, gang steward and winchman employed by defendant continued with cargo opera-

tions in the face of a known dangerous condition in direct violation of the Pacific Coast Maritime safety code adopted to cover working conditions of this gang aboard the vessel, which code was known to the winch driver, gang boss and walking boss.

8. The Court erred in failing to find that under the stevedoring contract under which defendant performed stevedoring services on plaintiff shipowner's vessels defendant had the obligation to the plaintiff to remove hatch beams and to refrain from negligent acts or omissions which would impose liability upon the plaintiff.

9. The Court erred in adopting conclusions of law inconsistent with the finding of fact.

10. The Court erred in that conclusion of law No. 4 is inconsistent with finding of fact No. 12.

11. The Court erred in that the findings of fact are insufficient to support conclusion of law No. 4.

12. The Court erred in that conclusions of law Nos. 1, 2, 4, 5, 6 and 7 are inconsistent with finding of fact No. 12 and not supported by the evidence or any finding of fact.

13. The Court erred in that the findings of fact are insufficient to support conclusions of law Nos. 1 and 2 that plaintiff and defendant were jointly and concurrently negligent and said conclusions were contrary to the findings of fact.

14. The Court erred in that there is no evidence or finding to support conclusion of law No. 2, that the shipowner knowingly supplied or knew that a particular hatch beam lacked a locking device.

15. The Court erred in conclusion of law No. 5

ı applying the law of American Mutual Liability ısurance Co. vs. Mathews, 182 Fed. 2d 332, and Ialcyon Lines vs. Haenn Ship Refitting Company, 42 U. S. 382 to the facts of this case and contrary ı its finding of fact No. 12.

16. The Court erred in holding that the plainff's right to indemnity against defendant in the ɔsence of an express contractual indemnity proision is allowable only in the event the former ıils to perform its non-delegable duty to furnish seaworthy ship.

17. The Court erred in holding that the plainff's right to indemnity against the defendant evedore company in the absence of an express ɔntractual indemnity provision is not allowable here plaintiff's negligence was inactive or passive ıd defendant's negligence was the active or primry cause.

18. The Court erred in awarding final judgment ı favor of defendant Marine Terminals Corporaon and against plaintiff American President ines, Ltd.

Dated: December 2, 1955.

/s/ LILLICK, GEARY, OLSON, ADAMS & CHARLES,

/s/ EDWIN L. GERHARDT,

/s/ GORDON L. POOLE,

Counsel for Appellant

[Endorsed]: Filed Dec. 2, 1955. Paul P. O'Brien, lerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION CONCERNING EXHIBITS

It Is Hereby Stipulated that the exhibits received in evidence at the trial of this cause need not be printed or otherwise reproduced but shall be considered in their original form and may be referred to by the exhibit designations allocated thereto at the trial.

Dated: December 2, 1955.

/s/ LILLICK, GEARY, OLSON, ADAMS & CHARLES,

Counsel for Appellant American President Lines, Ltd.

BOYD & TAYLOR,

/s/ By M. K. TAYLOR,

Counsel for Appellee Marine Terminals Corporation

[Endorsed]: Filed Dec. 2, 1955. Paul P. O'Brien, Clerk.